

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
 TYLER DIVISION

1 FOR THE DEFENDANT:

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MR. GREGORY S. AROVAS
3 KIRKLAND & ELLIS, LLP
601 Lexington Avenue
4 New York, New York 10022

5

6 MR. LUKE DAUCHOT
KIRKLAND & ELLIS, LLP
7 333 S. Hope Street
29th Floor
8 Los Angeles, California 90071

9

10 MR. ADAM ALPER
KIRKLAND & ELLIS, LLP
11 555 California St.
24th Floor
12 San Francisco, California 94104

13

14 MR. MICHAEL E. JONES
POTTER MINTON, PC
15 110 N. College, Ste. 500
P.O. Box 359
16 Tyler, Texas 75710-0359

17

18 MR. ROBERT A. VAN NEST
KEKER & VAN NEST, LLP
19 633 Sansome St.
San Francisco, California 94111

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1 P R O C E E D I N G S

2 (Jury out.)

3 THE COURT: Please be seated.

4 All right. I understand there's a matter
5 before we bring the jury in.

6 MR. JONES: Yes, Your Honor. The first
7 one, I think, is really simple, a ruling to deal with 14
8 exhibits. And I really don't think you need to hear
9 argument. We --

10 THE COURT: Is that microphone on,
11 Mr. Jones? I think it's the little button at the base
12 of the microphone.

13 MR. JONES: Is it on, Your Honor?

14 THE COURT: That's good.

15 MR. JONES: Thank you. Thank you.
16 Somehow I'll learn to operate something.

17 Anyway, I think you can make one ruling
18 to deal with 14 exhibits. There are certain licenses
19 that the Defendants have argued on Daubert motions and
20 motions in limines that they are not comparable and,
21 therefore, should not come into evidence.

22 We want to preserve our objection and
23 object to them coming into evidence for the reasons that
24 we've stated in those arguments due to the fact they're
25 not comparable.

1 But in light of the Court's prior
2 rulings, it seems to be obvious what the ruling of the
3 Court will be on that. If I could, I would read those
4 exhibits into the record.

5 THE COURT: All right.

6 MR. JONES: They are Exhibits 26, 27, 28,
7 29, 30, 32, 31, 33, 37, 307, 308, 309, 310, and 469.

8 THE COURT: Are those Plaintiffs' exhibit
9 numbers?

10 MR. JONES: Those are Plaintiffs'
11 exhibits, yes, Your Honor.

12 THE COURT: Okay. Your objection's
13 overruled.

14 MR. JONES: Thank you, Your Honor.

15 THE COURT: Anything further before we
16 bring the jury in?

17 MR. DE VRIES: Your Honor, just briefly,
18 this is Mike De Vries.

19 There are certain exhibits that are
20 related to the examination of Ms. Petersson today. One
21 of them is the document that was discussed on the record
22 yesterday. It was a notice letter to HP. There are
23 some other related documents. If it would please the
24 Court, we could take those up -- up now briefly.

25 THE COURT: All right. Uh-huh.

1 MR. DE VRIES: There are -- there are
2 essentially five documents that are at issue.
3 Document PX 238 is -- we believe it's an internal
4 calculation that was created by Ericsson for purposes
5 of -- in connection with this lawsuit, we believe. And
6 our objection is that it is hearsay.

7 It purports to be a calculation of a --
8 of the royalties underlying the HP license that was
9 discussed today in the objections to which were
10 overruled. This is, to our understanding, not a
11 document created in the ordinary course of business,
12 but, again, was an internal document that was created
13 for purposes of analyzing the effective royalty rate of
14 the HP license. It was created by Ericsson, and we
15 believe it's improper for that reason.

16 THE COURT: All right. Response?

17 MR. CAWLEY: It is a business record,
18 Your Honor. It was prepared in the course of Ericsson's
19 normal licensing business. They have to do calculations
20 to determine what they think an appropriate rate is to a
21 particular party. It was not prepared in anticipation
22 of this litigation. The witness will testify that it's
23 their normal business practice to do this and maintain
24 it.

25 THE COURT: Okay. Well, the witness lays

1 the predicate, I'll -- I mean, I haven't heard -- heard
2 the predicate yet. But assuming that they can lay the
3 appropriate business record credit -- predicate, your
4 objection will be overruled.

5 MR. DE VRIES: Yes, sir. We'd -- we'd
6 understood that the document was not created by the
7 witness today, but we'll listen for the foundation, as
8 well.

9 THE COURT: All right.

10 MR. DE VRIES: The next document is PX
11 240. It's an e-mail exchange between Ericsson and HP.
12 It relates, again, to that HP license, Your Honor, and
13 it includes statements by HP about it's -- about its
14 business. We object on the grounds that this is -- is
15 hearsay.

16 MR. CAWLEY: We don't -- we don't plan to
17 use this document, Your Honor.

18 THE COURT: All right. Objection
19 sustained.

20 MR. DE VRIES: PX 242 and 243 are some --
21 we're not exactly sure what the source of these
22 documents are, but they appear to be --

23 MR. CAWLEY: I apologize for this
24 exercise, Your Honor. We don't plan to use those two
25 either.

1 THE COURT: All right. They're not going
2 to offer those.

3 MR. DE VRIES: That -- that's easy.
4 Thank you very much.

5 THE COURT: Uh-huh.

6 MR. DE VRIES: Then lastly on 240, I -- I
7 suspect that Your Honor's earlier rulings already will
8 account for this. This appears to be another internal
9 estimate at Ericsson relating to the HP license.

10 THE COURT: I -- I believe he said they
11 weren't going to offer 240.

12 MR. DE VRIES: Oh, I'm sorry, this is
13 244, Your Honor.

14 THE COURT: 244.

15 MR. DE VRIES: And I may have misspoke,
16 and I apologize.

17 THE COURT: Uh-huh.

18 MR. DE VRIES: 244 appears to be another
19 Ericsson internal calculation. We don't think it was
20 written by Ms. Petersson. And in light of Your Honor's
21 earlier ruling, I suppose we'll wait to hear the
22 foundation. We don't think it's been established.

23 THE COURT: All right. Okay.

24 MR. DE VRIES: And then finally, Your
25 Honor, there's the document PX 250. That's the notice

1 letter that was sent to HP. My colleague Mr. Dauchot
2 yesterday described it to Your Honor. It's the initial
3 notice letter that was provided to HP.

4 We have concerns for the reason that Mr.
5 Dauchot stated yesterday, namely that -- that it will
6 appear that that document was sent to all of the
7 Defendants, when we have the stipulation to take the 408
8 correspondence out. And we don't think it's necessary.
9 We don't think it's necessary to interpret the license.

10 THE COURT: All right. Response?

11 MR. CAWLEY: Well, Your Honor, all I'm
12 going to ask the witness about that document is, did you
13 send a notice to HP? And is this a copy of it? I'm not
14 going to ask her, is this a form letter you always send?
15 Is this similar to what you sent to the Defendants in
16 this case?

17 So I'm not going to ask her any questions
18 that are going to begin to encroach on Your Honor's
19 concern about our discussing --

20 THE COURT: All right.

21 MR. CAWLEY: -- the content of settlement
22 negotiations.

23 MR. DAUCHOT: Your Honor, if I could --
24 I'm sorry, Luke Dauchot.

25 With that document, Your Honor, and it is

1 irrelevant. I don't know -- I mean, I understand the HP
2 license, and we had that discussion in the Daubert
3 context and all. But to start introducing what are --
4 amount to Rule 408 settlement discussions with HP and
5 just pick the first one out of the box, without dragging
6 in the entire Rule 408 history between the parties and
7 the back and forth and the discussions, strikes me as --
8 as -- as, one, irrelevant, Your Honor, under 402, but
9 certainly under 403, unfairly prejudiced, even assuming
10 a Rule 408 letter to HP before the license agreement
11 that they intend to rely on was entered into. You know,
12 it's -- it's just not relevant. I'm not sure what --
13 what's that probative to.

14 THE COURT: Let me see a copy of the
15 letter, please.

16 And, Mr. Cawley, what is this probative
17 of -- the contents of the letter, what is that probative
18 of?

19 MR. CAWLEY: It's probative of their
20 licensing practice and the notice. It's not within Rule
21 408 because it was offered to show notice.

22 THE COURT: Well --

23 MR. DAUCHOT: Your Honor, notice to whom?
24 I mean, and the fact that HP got notice of anything
25 is -- is not relevant under 402 because HP comes in as

1 a -- as the license agreement over our objection. When
2 they got notice, how they got notice, what was said in
3 the context of the notice really has nothing to do
4 with -- with this case.

5 THE COURT: All right. I'm going to
6 withhold ruling on it until I hear the testimony; but
7 before you actually go into it, approach the bench after
8 you've laid your predicate, and I'll hear objections
9 again.

10 MR. DAUCHOT: Thank you, Your Honor.

11 MR. DE VRIES: Your Honor, finally, there
12 is an exhibit -- it's PX 71. I imagine that it's within
13 the scope of Your Honor's ruling yesterday, but you'll
14 recall that there was a stipulation between the parties
15 about the date on which the Defendants received notice
16 of infringement. Part of that stipulation refers to a
17 document.

18 It's this document, PX 71, which was,
19 according to the stipulation, provided to Toshiba -- at
20 least this is what Ericsson contends -- during a
21 meeting.

22 I think the only question is whether that
23 document ought to come in through Ms. Petersson or be
24 admitted into the record without that testimony, and we
25 would appreciate Your Honor's guidance.

1 THE COURT: You'd like my guidance about
2 whether it should be put in through Ms. Petersson or
3 through someone else?

4 MR. DE VRIES: Our belief is that it
5 should not come in through Ms. Petersson, but I want to
6 recognize that Your Honor's ruling yesterday may have
7 overruled what I just said.

8 THE COURT: All right. Response?

9 MR. CAWLEY: Well, it's a business
10 record, Your Honor. There's no requirement that anyone
11 with personal knowledge of what is depicted in the
12 business record qualifies. They simply have to say
13 they're the appropriate custodian.

14 THE COURT: All right. Objection's
15 overruled.

16 All right. Anything further?

17 MR. DE VRIES: Your Honor, we have a list
18 of agreed upon pre-admitted exhibits. I -- I can bring
19 them up now if it pleases the Court.

20 THE COURT: We'll do that in front of the
21 jury --

22 MR. DE VRIES: Yes, sir.

23 THE COURT: -- as we bring them in.

24 MR. CAWLEY: We -- we do have one -- one
25 matter, Your Honor.

1 THE COURT: Okay.

2 MR. CAWLEY: In Ms. Petersson's
3 testimony, which I anticipate will probably begin later
4 this morning or early this afternoon, she is going to
5 get into the content, as Your Honor just heard, of these
6 license agreements. These agreements are attorneys'
7 eyes only under the protective order. They contain
8 highly-sensitive financial information, and many of them
9 contain obligations that Ericsson has undertaken to seek
10 to protect the confidentiality of what's in those
11 license agreements.

12 So we're going to request, during about
13 the 15 to 20 minutes as Ms. Petersson testifies about
14 the contents of those license agreements, that the Court
15 clear the courtroom of anyone not bound by the
16 protective order.

17 THE COURT: Okay. All right. Just for
18 the audience's information, when that happens -- and
19 I'll make this instruction on the record -- it will be a
20 sealed courtroom.

21 So unless you are an attorney that is
22 subject to the protective order that's been entered in
23 this case, when we get to that testimony, you'll need to
24 leave the courtroom. We will let you back in just as
25 soon as that's over with.

1 So, anything else before --

2 MR. DAUCHOT: Your Honor, if I could --
3 just one point. The concern on the part of the
4 Defendants, of course, is that we have a whole lot of
5 drama surrounding these license agreements which, as
6 Your Honor knows, is a -- is a hot-button issue in this
7 case.

8 In order to -- to tamp that -- that
9 appearance down and -- and take out some of the
10 potentially prejudicial effect, would it make sense to
11 have -- if they get into the licenses, have that done
12 after a break and so that when -- when the -- these
13 exhibits are introduced, that we don't have the jury
14 thinking that this is some real important matter here
15 that the courtroom needs to be cleared for? Just to --
16 to tamp that appearance down a bit and --

17 THE COURT: Response?

18 MR. DAUCHOT: -- and mitigate the
19 prejudice.

20 MR. CAWLEY: Well, Your Honor, like --
21 like all lawyers who prepare witnesses, there's a
22 certain sequence that I think helps the jury understand
23 Ms. Petersson's testimony. I'd be glad to ask the Court
24 or notify the Court; and if the Court wants to take a
25 break at the point when we reach this, I don't have any

1 objection.

2 THE COURT: All right. I'm going to deny
3 that request. I just -- I think it would leave more
4 questions in the jury's mind if they take a break and
5 they come back and the courtroom is empty than it would
6 if we -- if I explain it to them. I do this in cases
7 all the time when we get to this type of information.
8 So I don't think it's going to create a great problem.

9 All right. Bring the jury in, please.

10 COURT SECURITY OFFICER: All rise for the
11 jury.

12 (Jury in.)

13 THE COURT: Please be seated.

14 All right. Good morning, Ladies and
15 Gentleman of the Jury.

16 JURORS: Good morning.

17 THE COURT: Welcome back. Day two.

18 We're about to begin. And you look bright-eyed and a
19 lot more rested than you did at the end of the day
20 yesterday, so I hope you got a good night's sleep and
21 are ready to go again.

22 Mr. Cawley, if you'd like to put your
23 witness back on the stand.

24 MR. CAWLEY: Thank you, Your Honor.

25 Mr. Brismark, would you take the stand again, please?

1 THE WITNESS: Does this work?

2 GUSTAV BRISMARK, PLAINTIFFS' WITNESS, PREVIOUSLY SWORN

3 DIRECT EXAMINATION (CONTINUED)

4 BY MR. CAWLEY:

5 Q. Good morning, Mr. Brismark.

6 A. Good morning.

7 Q. Yesterday you told us, I believe, that there
8 is a group of people within Ericsson that are
9 responsible for managing Ericsson's patents. Is that --
10 do I remember that correctly?

11 A. Yes, that's correct.

12 Q. And you're a member of that group?

13 A. Yes.

14 Q. And have been for roughly the past 10 years?

15 A. That's correct.

16 Q. I think --

17 A. Since 2004.

18 Q. I think I may have misspoken yesterday, and I
19 think I -- the reason I think this, is because you told
20 me so last night. But I may have referred to you
21 yesterday as the head of that group, but that's not --
22 you're not the head of the group, are you?

23 A. I'm head of the portfolio management group,
24 yes.

25 Q. Okay. But -- but there's a larger group

1 within Ericsson that is also responsible for the
2 protection of Ericsson's patent portfolio.

3 A. Yes.

4 Q. And just so we understand, this group of
5 people, how many people are we talking about?

6 A. We talk about roughly 200 people.

7 Q. 200 people.

8 This -- this group of people, these are not
9 the engineers we talked about yesterday that are doing
10 research and development?

11 A. That's correct, yes.

12 Q. These are not people who themselves are -- are
13 getting -- inventing things that become patented?

14 A. Correct.

15 Q. These are people who are responsible for
16 managing Ericsson's thousands of patent assets, fair?

17 A. Yes.

18 Q. Okay. And that's part of your job.

19 A. That's part of my job, yes.

20 Q. You used to work in research and development,
21 but for the last 10 years, you haven't been doing that.
22 You have 10 patents to your name that came from your
23 years doing research and development, but for the past
24 10 years, you've been sort of not working in the -- in
25 the fields of technology, but working in an office

1 helping to take care of Ericsson's patents?

2 A. Correct.

3 Q. Okay. Now, in that capacity, do you have
4 responsibility for -- how many patents, would you say?

5 A. Ericsson today has 33,000 granted patents, and
6 it's been growing over the past years. So in the
7 beginning of 2004, it was less. Maybe twenty-five or
8 so. But it's been growing since then.

9 Q. Okay. So -- so it's thousands of patents?

10 A. Yes.

11 Q. Now, given that you're responsible for the
12 management of thousands of patents, I assume that it's
13 not really part of your job to become highly
14 knowledgeable about any one of them; is that a fair
15 statement?

16 A. Yes, that's fair, and it would be impossible
17 to have detailed knowledge on all of them.

18 Q. Okay. So -- but what I'd like to ask you to
19 do this morning is, we've heard something about the five
20 patents in this case from lawyers in opening statement;
21 but since you're the first witness, I'd like to ask you
22 to give us just a very high-level introduction to the
23 patents in this case.

24 We've heard that later in the trial we'll hear
25 from a professor at the University of Texas who has

1 studied these patents and studied the Defendants'
2 products; and that that testimony is going to be very
3 detailed and probably will take several hours.

4 But I'm not going to ask you to do that. What
5 I'm going to ask you to do is just to introduce us to
6 the patents and to tell us a little bit about them and
7 how they came about, and very generally, what they
8 relate to.

9 And let's start with Plaintiff's Exhibit 4,
10 which is the '625 patent.

11 A. Yes.

12 Q. Who invented the idea in the '625 patent?

13 A. It was two guys named Peter Larsson and Mikael
14 Larsson.

15 Q. Do you know Peter Larsson?

16 A. I do know Peter Larsson, yes.

17 Q. Can you show us a picture of him?

18 A. I can do that. So this would be Peter Larsson
19 in person.

20 Q. Tell us about him. What's Peter Larsson like?

21 A. We worked at Ericsson research, both of us,
22 and I know him from there. And Peter is also one of the
23 persons within Ericsson who has been named inventor of
24 the year, which is an award given to inventors having
25 outstanding performance.

1 Q. Okay. What -- what -- tell us something else
2 about him. What do you -- what do you know about Peter
3 Larsson based on having worked with him years ago?

4 A. Well, I know that he -- he's a very thoughtful
5 person. He is thinking a lot about sustainability and
6 environment; and among other things, he would, whenever
7 possible, rather take the train than an airplane, if
8 he's traveling, if that is an option --

9 Q. Okay.

10 A. -- and also when --

11 Q. Okay.

12 A. Yeah.

13 Q. Thank you.

14 A. Yeah.

15 Q. So what was Peter working on back in the late
16 '90s?

17 A. At that time, he was working at Ericsson's lab
18 in Singapore.

19 Q. Singapore. Okay.

20 Now, where -- is he a Swede? Is he from
21 Sweden originally?

22 A. He's Swedish.

23 Q. Okay. And he's an engineer, I guess?

24 A. Yes.

25 Q. And what was he working on in Singapore in the

1 late '90s?

2 A. So he was in a contract. At the time,
3 Ericsson was setting up a lab in Singapore, and the
4 objective of the project he was working on was to create
5 an office environment with computers calculating and
6 having high-performance wireless LAN in that office.

7 Q. All right. And in the course of doing that
8 work, working on a wireless LAN for an office, what did
9 he invent?

10 A. He invented, in the '625 patent, a
11 synchronization technique. It's related to
12 synchronization of networks that communicate at high
13 speed.

14 And as we talked earlier about retransmission
15 of lost packets, what he invented in this patent is a
16 way of making the transmitter work more efficiently in
17 order to stay synchronized.

18 Q. Okay. And when was his patent published?

19 A. It was published on July 23rd, 2002.

20 Q. How could his invention be important for
21 Wi-Fi?

22 A. It's important because in a wireless LAN or
23 short-range data radio network, when you go to higher
24 speeds, his inventions will enable those higher speeds
25 by -- by having more efficient communication and better

1 throughput.

2 Q. Okay. Now, yesterday you were -- you were
3 sitting in the courtroom for the opening statements by
4 the lawyers, weren't you?

5 A. Yes.

6 Q. And the lawyer for the Defendants who gave the
7 opening statement made quite a big point of pointing out
8 that the word Wi-Fi doesn't even appear in the '625
9 patent.

10 Do you remember that?

11 A. Yes.

12 Q. Were you surprised to hear that?

13 A. No.

14 Q. Why not?

15 A. Because to my understanding, Wi-Fi as a label
16 for the 802.11 standard was introduced in 2009.

17 Q. You mean 1999?

18 A. I mean 1999. Sorry.

19 Q. Okay. 1999.

20 And when was the filing date of this patent?

21 A. The filing date was October 28th, 1998.

22 Q. So this idea was conceived before the name
23 Wi-Fi was even invented; is that right?

24 A. Yes.

25 Q. Okay. Now, let me ask you about the second

1 patent that we'll hear about in this case. It's the
2 '568 patent, and it is Plaintiff's Exhibit 6.

3 A. Yes.

4 Q. Who invented the ideas in this patent?

5 A. This patent was invented by Krister Raith and
6 colleagues of Krister.

7 Q. Krister Raith is his name. Is Mr. -- do you
8 know Mr. Raith?

9 A. Yes, I do.

10 Q. Would you show us his picture?

11 A. Yeah. This is Krister Raith, yes.

12 Q. Okay. Is Mr. Raith originally from Sweden?

13 A. He is. And he was working in the research
14 group, which I joined in 1986, and he was the guy to be
15 friends with in order to be able to get to the coffee
16 table during breaks, because he was in control of the
17 money there.

18 Q. Okay. He ran the coffee concession in the
19 office?

20 A. Yes, he did.

21 Q. All right. And do you still know Mr. Raith?

22 A. Yes, I do.

23 Q. Where does he live now?

24 A. He lives today in San Diego.

25 Q. What did Mr. Raith and his co-inventors invent

1 that was awarded the '568 patent?

2 A. What they invented and what the '568 patent
3 was for, was the need for having different optimization
4 for different type of services in a wireless data
5 network that offered multiple types of services going
6 over the interface.

7 So by introducing an identifier, the system
8 could optimize better and use better optimization for
9 different service types.

10 Q. I see. When was this patent published?

11 A. This was published in October of 2002.

12 Q. Is all that information on the face of the
13 patent?

14 A. Yes.

15 Q. Why are these ideas in -- in this patent
16 important for Wi-Fi?

17 A. They are important, because they --

18 MR. AROVAS: Your Honor, I object. I
19 believe we're getting into opinion testimony.

20 May I approach?

21 THE COURT: Yes, you may.

22 (Bench conference.)

23 MR. AROVAS: We actually talked about
24 this this morning. My concern of this witness is, this
25 witness is not an inventor in any of the five patents.

1 He testified he didn't even read the patents in their
2 entirety.

3 And he was not disclosed as an expert,
4 and so when he -- if he wants to challenge and say what
5 the invention is, that's one thing; but when he starts
6 to say why is it relevant to Wi-Fi, he's effectively
7 doing an infringement analysis. He's saying his
8 invention is relevant to the accused product, and that
9 would be opinion testimony.

10 So what we discussed today is, if he
11 wants to say, at a very high level, because he's not an
12 inventor, he's not -- this is not fact testimony. This
13 is generally what this was about, fine, we'll let that
14 go.

15 But when he starts to say, how is it
16 relevant to Wi-Fi, he's basically saying, why is this
17 invention important to be used in Wi-Fi, which is
18 effectively opinion testimony on infringement.

19 MR. CAWLEY: Well, it's not -- it's not
20 that close to an opinion of infringement. He's one of
21 skill in the art. They've taken his deposition.
22 He's not talking about claims. He's not comparing
23 claims to accused products. He hasn't seen the accused
24 products. He's just generally testifying as an Ericsson
25 employee, and I believe this would be relevant to Wi-Fi.

1 THE COURT: Overruled.

2 (Bench conference concluded.)

3 Q. (By Mr. Cawley) Mr. Brismark, let me repeat my
4 question to you. How is this patent we were just
5 talking about, the '568 patent, important for Wi-Fi?

6 A. It's important because Wi-Fi as developed from
7 its first release into what it is today where you have
8 the possibility and the mechanisms to support different
9 type of services with different requirements, which was
10 not the case in the beginning.

11 This is a way of making that possible in a
12 Wi-Fi system. And the inventor foresaw that need when
13 he made this invention.

14 Q. All right. Thank you, sir.

15 Let's move now to the next patent of the five.
16 This is the '223 patent. It is Plaintiffs' Exhibit 8.

17 Who invented the idea that is protected by
18 this patent?

19 A. So the inventors of this patent is Stefan
20 Reiner (sic) and Reiner Ludwig.

21 Q. Can you show us a picture of Mr. Wager?

22 A. Yes, I can do that. So we have Mr. Wager here
23 in this picture.

24 Q. The inventors we have seen so far are Swedes.
25 Is Mr. Wager from a different country?

1 A. Mr. Wager is from Germany.

2 Q. Germany?

3 A. Yes.

4 Q. And does he work in -- in Germany now --

5 A. Yes.

6 Q. -- for Ericsson?

7 A. He has a research lab in Aachen in Germany.

8 Q. In Aachen. And did -- what -- what did Mr.
9 Wager and his co-inventors invent that became the '223
10 patent?

11 A. They invented a methodology where you would
12 introduce a timer for how long to continue doing
13 retransmissions if packets were not being acknowledged
14 by the receiver.

15 Q. Okay. And did Ericsson submit this idea in
16 the form of the patent to the 3G standard-setting body?

17 A. Yes.

18 Q. Let me show you Plaintiffs' Exhibit 204 and
19 ask you what this is.

20 A. So this is a contribution to the working
21 group -- two of the radio access network standardization
22 activity related to 3G.

23 Q. Okay. In other words, this is -- this is a
24 document that Ericsson sent to the 3G standard-setting
25 body saying we want to declare our patents essential

1 to -- essential to the standard that you're developing?

2 A. No. This is a contribution which was -- is
3 more a technical contribution, describing one of the
4 solutions that Ericsson proposed to --

5 Q. I see.

6 A. -- the standardization activity for inclusion
7 into the standard.

8 Q. So that Ericsson is proposing that this is
9 something that that body might want to consider adopting
10 as part of the standard?

11 A. Correct, yes.

12 Q. Now, we heard a little bit about this
13 yesterday, again, in the opening. I want to make sure
14 because I'm afraid there's some terminology here that
15 may be confusing.

16 You told us that this was a contribution that
17 Ericsson made to the 3G standard. Does that phrase, or
18 word really, a contribution, have a particular meaning
19 in this context?

20 A. Yes. You usually refer to -- you use the word
21 contribution when you talk about input paper or proposed
22 solution of a certain technology which you propose to be
23 included into a standard.

24 Q. Okay. So I want to make sure we all
25 understand that because I'm afraid there's some

1 potential confusion there about the word contribution.

2 Are you saying that usually when it's used by
3 people in this field who are knowledgeable about
4 standard-setting, it means a written proposal that
5 certain technology be adopted into a standard? That's a
6 contribution?

7 A. Yes.

8 Q. But there's another way we could use the word,
9 I guess, that we normally use it, that when you
10 contribute to something, you just sort of help along the
11 way, so the person who types up the standard contributes
12 to it, right?

13 MR. AROVAS: Objection. I don't think
14 the witness can testify as to his opinion.

15 THE COURT: Overruled.

16 Q. (By Mr. Cawley) You can answer.

17 A. Yes, I agree.

18 Q. Okay. So -- so when you -- when you indicate
19 that this is a contribution that Ericsson made to the
20 standard, you're using it in that specialized way of a
21 written submission of technology?

22 A. Yes. It doesn't say anything -- whether or
23 not a contribution would be actually included in the
24 standards, so it's mainly referring to the paper as
25 such.

1 Q. And by making this -- this contribution, did
2 Ericsson make a commitment that it would license any
3 patents it held covering the standard on the reasonable
4 and non-discriminatory terms you explained to us
5 yesterday?

6 A. That is something that Ericsson would do in
7 parallel; it's not done in this paper as such. It's
8 done -- usually, you give first a blanket declaration
9 in, in essence, saying that you're willing to license
10 your patents on RAND terms. And then in addition, in
11 ETSI, you would do so for individual patents in a later
12 stage.

13 Q. Okay. And -- and did this contribution become
14 a part of the 3G standard?

15 A. Yes.

16 Q. Is it also important for Wi-Fi?

17 A. Yes, it is.

18 Q. Can you tell us how?

19 A. It's also a part of the Wi-Fi standard to do
20 in a similar way or in the same way as it's done in the
21 3G version.

22 Q. Okay. Let's move on to the next patent.

23 That's the '215 patent, Plaintiffs' Exhibit 10.

24 Who invented the idea that became Plaintiffs'
25 Exhibit 3?

1 A. So this patent was invented by a team of
2 people in different locations. Among others, Mr. Erik
3 Schön was one of the inventors.

4 Q. Okay. How do you pronounce his last name?

5 A. Schön, S-c-h-ö-n.

6 Q. Okay. Thank you. We -- we can't even spell
7 the same, I'm afraid S-c-h-u-n, you said is -- is an O
8 with two dots over it?

9 A. That's correct.

10 Q. Okay. I'm sure the Court Reporter can handle
11 the two dots later. But do you have a picture of him
12 you could show us?

13 A. Yes, I do.

14 Q. Tell us about Mr. Schön.

15 A. So Mr. Erik Schön and I were colleagues and
16 actually at the time of this invention we were both
17 working out of the office in Tokyo, in Japan.

18 Q. Uh-huh.

19 A. Today we are both living in Sweden again.

20 Q. Okay. If we go back to the face of the patent
21 and we highlight the part that's already highlighted
22 there, but blow it up if you can, Mr. Diaz, that shows
23 us the inventors.

24 We see the first one is from Malmo. Is that
25 in Sweden?

1 A. Yes.

2 Q. And the second one is from Aachen. That's in
3 Germany?

4 A. Yes.

5 Q. And so is the third one, from Aachen?

6 A. Yes.

7 Q. And then from Stockholm?

8 A. Yes.

9 Q. And another town in Sweden, right?

10 A. Sollentuna, yes.

11 Q. And another Swedish town?

12 A. Yes.

13 Q. And then finally, two inventors from Tokyo?

14 A. Correct.

15 Q. So is this literally an example of Ericsson
16 inventors around the world collaborating to develop this
17 invention?

18 A. Yes, absolutely. We hired research labs
19 collaborating on the 3G development throughout the world
20 at the time when this was being invented.

21 Q. And what did they invent that became this --
22 this patent?

23 A. This specific invention is related to how you
24 can minimize the overhead of the -- the feedback in a --
25 in acknowledgement messages. That's important if you

1 want to have a really high throughput network. You need
2 to make the control overhead more efficient, so to
3 speak, in order to get all the focus on getting data
4 through the network.

5 Q. Okay. Mr. Brismark, you used some words in
6 that answer like overhead and throughput, and I'm not
7 going to take the time to ask you about those things
8 now. I'm just going to move on --

9 A. Okay.

10 Q. -- and ask Professor Nettles to explain that
11 to us when he's giving us more detail about this patent.

12 Were these ideas that became the '215 patent
13 also submitted to the 3G standard-setting body?

14 A. Yes, they were.

15 Q. Let me show you Plaintiffs' Exhibit 515. What
16 is this document?

17 A. It's, again, a contribution document with a
18 technical solution which was suggested to the same
19 working group 2 we talked about earlier.

20 Q. Uh-huh. And did they also agree to license
21 this patent on RAND terms?

22 A. Yes.

23 Q. You know, I am going to ask you about that
24 phrase because it is potentially confusing, and I know
25 it's part of your job to -- to know about these things.

1 Yesterday we explained this idea, a commitment
2 that companies can make and that Ericsson in this case
3 has made to license the patents to people who need to
4 use them on reasonable and non-discriminatory terms.

5 A. Yes.

6 Q. You just used, though, and then I followed
7 your lead and also used, an expression, FRAND, which
8 would be spelled F-R-A-N-D. What does that mean?

9 A. That's the term that is used in ETSI, the
10 other standardization body we talked about. And the F
11 stands for fair.

12 Q. Fair, reasonable, and non-discriminatory?

13 A. Yes.

14 Q. So is it -- is it typical that in -- people --
15 when people in Europe where ETSI is located are
16 licensing patents, they talk about FRAND, with an F in
17 front of it, and people in the United States have
18 traditionally talked about RAND?

19 A. That's my understanding, yes.

20 Q. But are they really significantly different
21 commitments?

22 A. No. I actually use FRAND and RAND commitments
23 being the same.

24 Q. Okay. Great.

25 Now, back to the '215 patent. You said

1 that -- that Ericsson agreed to license that patent on
2 FRAND terms?

3 A. Yes.

4 Q. And was it voted into the standard -- 3G
5 standard?

6 A. Yes, it was.

7 Q. Is it also important for Wi-Fi?

8 A. Yes.

9 Q. Why do you say that?

10 A. Because Wi-Fi has also developed, since its
11 first release up until the release 11n, and today has
12 similar type of -- of performance which means that this
13 invention is -- is used and -- and has -- is benefit to
14 the Wi-Fi standard.

15 Q. All right, sir. Now, the last patent is the
16 '435 patent -- that is Plaintiffs' Exhibit 3. Who
17 invented this idea?

18 A. This was invented by Mr. Lazraq and Mr. Khan,
19 both from Sweden.

20 Q. They're both from Sweden? What did Mr. Lazraq
21 and Mr. Khan invent?

22 A. They invented an invention which is also
23 related to -- to synchronization of sender and receiver
24 in a situation where you have lost packets and
25 confirmations and so forth where the -- it would help

1 the receiver to work more efficiently.

2 Q. And when was the patent published?

3 A. It was published in 2001, December.

4 Q. December 2001.

5 And is this idea, the idea that is in this
6 patent, also important for Wi-Fi?

7 A. Yes, it is.

8 Q. And why is that?

9 A. It's also providing means for -- for better
10 throughput in a high throughput network.

11 Q. Okay. Now, thank you for -- for introducing
12 us to those patents, Mr. Brismark. I know we'll hear a
13 lot more about them in -- in the days to come.

14 On the patent video that the jurors heard
15 yesterday morning before they came up to the courtroom,
16 there was some discussion about something called the
17 state of the art. Are you familiar with that term?

18 A. Yes.

19 Q. I guess most of us -- we hear it sometimes
20 when someone says, wow, that stereo system is the state
21 of the art or that jet plane is the state of the art.

22 What do you understand that to mean?

23 A. I understand it to mean the level where the
24 technology at this point in time, the best solution you
25 can find for solving a certain problem at this point in

1 time.

2 Q. Okay. Now, when were the five patents -- the
3 five Ericsson patents you just described to us that are
4 in this case, when were they the state of the art?

5 A. They were state of the art in -- in the late
6 '90s -- mid-to-late '90s.

7 Q. Okay. Can we see that if we look at the face
8 of the patents, that all of them were filed with the
9 Patent Office in the late '90s?

10 A. Yes, by looking at the filing dates, you will
11 see that.

12 Q. Now, does Ericsson enter into agreements with
13 its employees, you and all its other employees, that if
14 the employee invents something while they're working for
15 Ericsson, that the employee will agree to assign their
16 patent rights to the company Ericsson?

17 A. Yes.

18 Q. Is that -- is that in your understanding a
19 pretty typical agreement for people who work for
20 technology companies and are paid to develop things?

21 A. Absolutely. That's my understanding.

22 Q. And have the inventors -- all of the inventors
23 of the five patents in this case assigned their patent
24 rights to Ericsson?

25 A. Yes, they have.

1 Q. And are those assignments found in Plaintiffs'
2 Exhibits 408 through 412?

3 A. Yes, you can find it there. Those are the
4 assignments.

5 Q. Now, Mr. Brismark, in 2003 did Ericsson
6 analyze which of its patents it felt were important for
7 and even essential for Wi-Fi standards?

8 A. Yes.

9 Q. And did some of the people in the group you
10 worked for begin to study products that were made by
11 companies that offer Wi-Fi?

12 A. Yes.

13 Q. And did Ericsson contact some of the companies
14 who used the Wi-Fi standard about the possibility of
15 taking a license?

16 A. Yes, we did.

17 Q. And were you successful -- I don't mean you
18 personally. Was Ericsson successful in entering into
19 license agreements with some of those companies for your
20 Wi-Fi patents?

21 A. Yes, in some cases, but not in all.

22 Q. Okay. So there were other companies that even
23 though you contacted them, you were not successful to
24 entering into an agreement with them?

25 A. Yes.

1 Q. Is that accurate?

2 A. Yes, that's correct.

3 Q. Why did Ericsson file this suit?

4 A. We filed this lawsuit because we saw no other
5 possibility to resolve this conflict we have and where
6 some companies have actually taken a license to
7 Ericsson's patents, when others -- others have refused
8 to do so.

9 Q. Were you involved in the decision to file this
10 case?

11 A. Yes, I was.

12 Q. Who else was involved at Ericsson?

13 A. My manager, Kasim Alfalahi, also head of IP
14 licensing was involved, and so was the CEO of the
15 company.

16 Q. The head of the entire company participated in
17 the decision to file this suit?

18 A. Yes, he was.

19 Q. Now, has Ericsson often had to file suit in
20 the U.S. to collect a reasonable royalty for the use of
21 its patents?

22 A. No.

23 Q. Is that a rare thing for Ericsson?

24 A. Yes, it's very rare. Yeah.

25 Q. Okay.

1 MR. CAWLEY: Thank you, Your Honor. I
2 pass the witness.

3 THE COURT: All right.

4 Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. AROVAS:

7 Q. Good morning, Mr. Brismark.

8 A. Good morning.

9 Q. And so since we haven't met before, let me
10 introduce myself. My name is Greg Arovas.

11 A. Good morning, Greg.

12 Q. Pleasure to meet you.

13 A. Pleasure to meet you.

14 Q. So where I'd like to start, you talked quite a
15 bit about the IEEE.

16 A. Yes.

17 Q. Do you recall that?

18 So I'd like to talk about -- or start with
19 your experience and exposure to the IEEE. Okay?

20 A. Okay.

21 Q. Now, it's a fact, isn't it, that you've never
22 attended an 802.11 IEEE meeting, right?

23 A. That's correct.

24 Q. It's a fact that you've never worked on any
25 technical projects directed to 802.11, right?

1 A. Not directly directed to 802.11, that's
2 correct.

3 Q. Right. And, in fact, you were deposed and you
4 explained that, although you are an engineer by
5 background, you can't identify any projects that you
6 were personally involved in at Ericsson that were
7 specifically focused on local area network technologies,
8 right?

9 A. Correct.

10 Q. And, in fact, when you were deposed, you
11 explained you hadn't even read the 802.11 standard;
12 isn't that right?

13 A. I hadn't personally read it, that's correct.

14 Q. That's right. And that's in this case, and
15 the Wi-Fi that we're talking about is 802.11 Wi-Fi,
16 right?

17 A. That's correct, yes.

18 Q. And in addition to not attending any meetings,
19 you've never made any proposals, contributions, or
20 submissions to the 802.11, right?

21 A. That is right.

22 Q. You've never commented on any draft 802.11
23 standards, right?

24 A. No, I haven't done that.

25 Q. And, in fact, broadening this beyond just

1 802.11, you've never made any presentations to any IEEE
2 groups at all for any IEEE standard, right?

3 A. I have not presented in IEEE, that's correct,
4 yes.

5 Q. Okay. So now, what I would like to do is take
6 a step back and talk about wireless communications more
7 generally.

8 And you talked about different types of
9 wireless communications: Cellular, wireless LANs, I
10 think you talked about Bluetooth. Those are all
11 different types of wireless communications, right?

12 A. Yes.

13 Q. And you would agree with me that -- let's just
14 talk about cellular first, and cellular is the core of
15 Ericsson's business, right?

16 A. Sorry. Yes, it's the core of our business.

17 Q. Okay. And so let's start by talking about
18 cellular standards. And you would agree with me that
19 there's many, many different cellular standards that
20 have been developed over the years, right?

21 A. There are quite a few, yes.

22 Q. Okay. And so -- and they all have usually
23 acronyms or names that go along with them, right?

24 A. Yes.

25 Q. For example, they have names like EVDO, right?

1 A. That would be a name, yes.

2 Q. UMTS, WCDMA, GSN, GPRS, IS-54, IS-36, EDGE,
3 CDMA2000, LTE, Wi-MAX, HSDPA, HSUPA. Those are all
4 different standards, right?

5 A. Well, some of them relate actually to the same
6 thing, among the ones you talked about; but they may be
7 different variations of standards.

8 Q. Right. And so there are many different
9 standards. So let's take, for example, CDMA2000, all
10 right?

11 A. Okay.

12 Q. Okay. That's different than GSN, right?

13 A. It's different, yes.

14 Q. Yeah. And the reason -- or take EVDO, that's
15 different than WCDMA, right? Different standards,
16 right?

17 A. Those are different standards, that is
18 correct.

19 Q. And, in fact, as you explained on your direct,
20 the way these different standards work is they have a
21 complex set of rules that describe how devices using
22 that standard will communicate, right?

23 A. They consist of several specifications that
24 would describe how they would interoperate; that is
25 correct, yes.

1 Q. Right. And those specifications can be
2 thousands of pages long, right?

3 A. Correct.

4 Q. Okay. And you compared, I think, to -- to a
5 language, right, in your direct?

6 A. I made such a parallel, yes, that's correct.

7 Q. Right. And so one way we could think about it
8 is that you have, let's say a CDMA2000 or an EVDO
9 standards based product that might speak one language
10 and you have a GSM product who would speak a different
11 language, right?

12 A. I think on Layer 1, the physical layer, that's
13 absolutely true --

14 Q. Right.

15 A. -- but the higher up you come in -- in the
16 layers, they will be more common, I would say.

17 Q. Okay. But the point is the two couldn't speak
18 to each other. So if I had a device only doing
19 CDMA2000, let's say, it can't speak to a device speaking
20 only GSM, right?

21 A. Correct.

22 Q. Okay. And those standards, I think, as you
23 explained, right, come out of different standards or
24 come out of standards-setting groups, right?

25 A. Yes.

1 Q. And the way those standard-setting groups work
2 is they'll figure out what they want to do and then try
3 to come up with technology that will achieve what they
4 want to accomplish, right?

5 A. That is correct.

6 Q. Okay. And you could have two standards that
7 may let's say have the same data rate or throughput, but
8 they could do it in different ways, right?

9 A. Absolutely.

10 Q. Right. And, in fact, that's a fundamental
11 principle of how all this engineering works is that
12 there's often different ways to get the same
13 performance, right?

14 A. I don't know if it's a fundamental principle,
15 but it's usually possible to find different solutions.

16 Q. Right. And so we could have at one point in
17 time one device using one standard, another device using
18 another standard. They could have the same high speed,
19 but they may speak different languages and do it
20 differently, right?

21 A. That is correct.

22 Q. Now, let's move on to, you know, talking about
23 wireless LANs. You spoke about wireless LANs in your
24 direct, right?

25 A. Yes, I did.

1 Q. Okay. And wireless LAN, the -- the L -- the
2 LAN part of wireless LAN stands for local area network,
3 right?

4 A. That's correct.

5 Q. All right. And that's a computer network,
6 right?

7 A. It's a local area network.

8 Q. Right. And the wireless piece means it does
9 it without wires, right?

10 A. Yes.

11 Q. And just like the -- you know, when we're
12 talking about cellular standards, there are different
13 standards for wireless LANs, right?

14 A. Different standards for wireless LANs?

15 Q. Yes.

16 A. I suppose there are, yes.

17 Q. Well, of course, you know there are, right?

18 A. I know a couple, yes.

19 Q. Yeah. Okay. And so, for example, the one
20 that we're talking about in this case for wireless LANs
21 is 802.11, right?

22 A. Yes.

23 Q. And that's a standard that was created by a
24 group called the IEEE, right?

25 A. Yes, that's correct.

1 Q. And the IEEE is one of the leading engineering
2 professional organizations in the world, right?

3 A. It's one of several leading organizations,
4 yes.

5 Q. All right. And that's based here in the
6 United States, right?

7 A. It is, yes.

8 Q. Okay. And the IEEE is, in fact, responsible
9 for hundreds, if not more, of computer and electronic
10 standards, right?

11 A. I don't have a detailed number, but I'm aware
12 of several standards they have developed.

13 Q. Okay. And they have developed many, many
14 standards; you'd agree with that, right?

15 A. Yes, I would agree with that.

16 Q. Okay. And as we were talking about before,
17 there are different -- some other wireless LAN standards
18 that come from different places, right?

19 A. Yes.

20 Q. Like, for example, one that you know about is
21 hyperlink, right?

22 A. That is correct.

23 Q. And HiperLAN wasn't developed as part of the
24 IEEE, right?

25 A. No, it was developed by -- by ETSI.

1 Q. Right. And ETSI is the European
2 Telecommunications Standard Institute, right?

3 A. Yes.

4 Q. Right. Based in Europe, right?

5 A. That's correct.

6 Q. Okay. And it's a fact, isn't it, that
7 HiperLAN devices are incompatible with the 802.11
8 devices in the sense if I built the HiperLAN device and
9 I built a 802.11 device, they're not going to be able to
10 talk to each other, right?

11 A. Yes, that's correct.

12 Q. Okay. And that's because they use different
13 standards that set different rules for how they
14 communicate, so if one tries to talk to the other,
15 they're not going to be able to communicate, right?

16 A. Yes.

17 Q. Okay. So what I'd like to do is show you one
18 of the internal Ericsson documents that were provided to
19 us in this case. And to do that, I'm going to need to
20 use the ELMO.

21 MR. AROVAS: And do I need to do anything
22 else to get this going? That's it? Thank you.

23 Q. (By Mr. Arovas) Okay. And so what I'm going
24 to show you, it's Exhibit DX 51. And the -- I'm going
25 to show you first -- there we go.

1 I want to first show you a clear page of the
2 exhibit. This doesn't have the exhibit sticker on it.
3 But this is for the LPD All Staff meeting in February of
4 2010; is that right?

5 A. That appears to be right, yes.

6 Q. Right. Then the official exhibit copy is not
7 quite so clear --

8 A. Okay.

9 Q. -- but it's Exhibit DX 51. That's the same
10 thing, right?

11 A. I couldn't say, but I believe you.

12 Q. Okay. And let's take a look inside that
13 document at one of the pages, and I am going to blow it
14 up so everybody can see it a little bit better, but let
15 me start with, you know, the whole page.

16 And this relates to wireless LAN standards,
17 right?

18 A. Yes.

19 Q. Let's make it a little bigger.

20 Okay. And when we're talking about different
21 kinds of standards for wireless LANs, we see that this
22 one actually talks about a couple of different ones. It
23 talks about HiperLAN over here. That's what we were
24 talking about first, right?

25 A. Yes.

1 Q. And it talks about the 802.11 standards,
2 right?

3 A. Yes.

4 Q. And there are a lot of different 802.11
5 standards listed there, right?

6 A. Yes, there are.

7 Q. Right? 802.11 from 1990; b for '99; a, 2000;
8 g, 2003; n, 2009, right? Is that right?

9 A. That's correct.

10 Q. And those are all different 802.11 standards,
11 right?

12 A. They are different releases, yeah.

13 Q. Okay. And on the other side, we have a
14 different standard called HiperLAN, right?

15 A. Correct.

16 Q. Okay. And that has H1 and H2, and they go
17 from 1990 to 2000, right?

18 A. That's correct.

19 Q. Okay. And what Ericsson's doing in this
20 internal document is comparing the 802.11 standards to
21 HiperLAN, right?

22 A. I cannot answer that question. I haven't seen
23 the document in its entirety.

24 Q. Okay. Well, you agree with me that, as you
25 explained in your deposition, that this is a

1 presentation to Ericsson's staff in the licensing of
2 patent developmental organizations, right? And that's
3 your group?

4 A. That is correct, yes.

5 MR. CAWLEY: Your Honor, may we request
6 that if the witness is going to be examined about this
7 document, that he be provided with a copy of it?

8 MR. AROVAS: Certainly. We have a binder
9 we can hand out.

10 THE COURT: Please. Please provide him
11 with one.

12 MR. AROVAS: Would the Court like a set,
13 as well?

14 THE COURT: Yes, that will be fine.

15 THE WITNESS: Thank you very much.

16 MR. AROVAS: Would you like a set?

17 MR. CAWLEY: Please. Thank you.

18 Q. (By Mr. Arovas) And you'll find this is
19 Exhibit DX 51 in the binder?

20 THE COURT: Counsel, mine says Brismark
21 deposition transcript.

22 MR. AROVAS: Sorry about that. My
23 apologies, Your Honor.

24 THE COURT: Thank you.

25 Q. (By Mr. Arovas) Okay. Mr. Brismark, do you

1 have the document?

2 A. Now I have the document, yes.

3 Q. Okay. And you -- as you testified in your
4 deposition, this is a presentation from an important
5 meeting that you would have attended, right?

6 A. Yes, I attended this meeting.

7 Q. Okay. Good. So now let's go back to the
8 document.

9 So we have 802.11 on one side. We have
10 HiperLAN on the other side. And the document describes
11 and contrasts each of the two standards; isn't that
12 right?

13 A. I think the document describes our activities
14 to build a portfolio relevant for the 802.11 standards.

15 Q. Okay. And it says that the focus of HiperLAN
16 was a complete technical solution, right?

17 A. Yes, that's what it says.

18 Q. Yes. And, in fact, it says HiperLAN had a
19 high-price level strategy, right?

20 A. Yes, that's what it says.

21 Q. Okay. And we see a different description of
22 the 802.11 standards; is that right?

23 A. We see bullets on the other column, if that's
24 what you're referring to... I agree, yes.

25 Q. Right. And the focus of 802.11 was the

1 market, right?

2 A. That's what it says, yes.

3 Q. Yes. And the way it did it was simple
4 technical solutions, right?

5 A. Yes, I can read that, too.

6 Q. And it had a low-price strategy in contrast
7 with the HiperLAN high-price strategy, right?

8 A. Correct, that's what the document says.

9 Q. Okay. So let's continue on. And what
10 eventually happened to HiperLAN? It was discontinued,
11 right?

12 A. Yes, it discontinued.

13 Q. And no commercial products were ever made from
14 HiperLAN, right?

15 A. To my understanding, I don't know of any
16 commercial products.

17 Q. Okay. But the 802.11 were continued, correct?

18 A. Yes, it did.

19 Q. And, in fact, the 802.11 has become, you know,
20 probably the most successful wireless LAN standard in
21 the world, right?

22 A. That's my understanding, yes.

23 Q. Okay. And let's take a look at another one of
24 your documents, and this is going to be in your binder.

25 It's DX 98.

1 Do you have that?

2 A. Yes.

3 Q. Okay. And DX 98 is all staff meeting from May
4 2005 on wireless LANs, right?

5 A. Yes, it's from 2005.

6 Q. Right.

7 A. Correct.

8 Q. One of the authors is -- I might get this
9 wrong -- Nhils Forslund; is that right?

10 A. That is correct.

11 Q. And he works for you, right?

12 A. He works for me, yes.

13 Q. Okay. And so actually this document has a
14 chronology of what Ericsson was doing in the area of
15 wireless LANs, right?

16 A. Could you repeat the question?

17 Q. Well, let's take a look at it. If you look at
18 the second page of the document, you'll see that there's
19 a chronology -- and I'll put it on the screen -- of what
20 Ericsson -- here's the top of the page. And we look
21 down a little bit, and we see there's a chronology of
22 what Ericsson was doing in wireless LANs, right?

23 A. Yes.

24 Q. Okay. And what we see is, if we want to know
25 what Ericsson was up to back then -- the H2 project,

1 that refers to HiperLAN, right?

2 A. Yes, that's correct.

3 Q. Okay. That was closed when 802.11 succeeded,
4 right?

5 A. That is most likely the timing when -- when
6 ETSI decided to discontinue the standardization, yes.

7 Q. Okay. And you testified on direct that
8 Ericsson wasn't really interested in making an 802.11
9 product, right?

10 A. We had noted that as part of our core strategy
11 in -- in the late '90s, early 2000s; that's correct.

12 Q. In fact, this is early 2000. So what we can
13 see in the internal Ericsson document, when H2, the
14 European WLAN stan -- wireless LAN standard was closed
15 down, right, the R&D project team started to focus on
16 developing 802.11a equipment, right?

17 A. Yes, that's correct. Around 2002, 2003, I
18 think Ericsson had a unit which was focusing on wireless
19 LAN for enterprise use.

20 Q. Right. And so actually what really happened
21 is the European standard went nowhere. Ericsson went to
22 802.11, and Ericsson moved its development to try to
23 make 802.11a equipment, right?

24 A. For a limited period of time, we had an
25 activity focusing on -- on finding a market for products

1 on 802.11 in the enterprise area, yes.

2 Q. Okay. And so what happened to that project,
3 though, is that was shut down, too, right?

4 A. That was discontinued later on, yes.

5 Q. Right. And, in fact, we see that in the
6 chronology laid out in the document that -- but this R&D
7 project was also closed down sometime around 2001 to
8 2002 and -- when the profit seemed too small, right?

9 A. Yes. I think that refers to the internal
10 Ericsson R&D project. However, the program on
11 investigating being on the market continued a bit longer
12 than that.

13 Q. Okay. And it was shut down, right?

14 A. Excuse me?

15 Q. And it was eventually shut down, right?

16 A. Yes, it was discontinued.

17 Q. Right. And, in fact, the document says that
18 the WLAN R&D within Ericsson stopped, as is explained
19 here, right?

20 A. Yes.

21 Q. Okay. And so where we are in the chronology
22 is HiperLAN ends, Ericsson goes to 802.11, Ericsson's
23 interested in making a 802.11 product, and Ericsson
24 starts attending 802.11 meetings, right?

25 A. That would be a correct description of the

1 chronology. I agree, yes.

2 Q. Okay. And it's a fact, isn't it, that when
3 Ericsson decided to put their focus in 802.11, Ericsson
4 started sending engineers to the 802.11 meetings, right?

5 A. We did. However, it was a very limited
6 effort, I would say, compared to other efforts within
7 Ericsson.

8 Q. Okay. And the 802.11 -- you talked about
9 standards. The 802.11 standards are a collaborative
10 process, right?

11 A. It is, yes.

12 Q. Yeah. And anybody who wants, can join and
13 come to the 802.11 meetings, right?

14 A. Yes.

15 Q. And the way it works is that when you want to
16 build a standard, you want to pick the best technology
17 for what you're trying to do, right?

18 A. That's the methodology I -- I talked about
19 yesterday, yes.

20 Q. Right?

21 A. That's the way you make decisions.

22 Q. And all the engineers from all these different
23 companies, they can contribute whatever technology they
24 think is going to be best for that standard, right?

25 A. Yes.

1 Q. And then the engineers vote on it, right?

2 A. They do.

3 Q. And they decide what they think is right for
4 the standard they want to build, right?

5 A. Yes.

6 Q. And sometimes there's very vigorous debate
7 comparing all the different alternatives, right?

8 A. That may be the case. That's correct, yes.

9 Q. Right. And, in fact, Ericsson, when they were
10 asked, 802.11 made a proposal of technology of what they
11 thought should go into 802.11, right?

12 A. Yes, that's right. Ericsson proposed to take
13 in the entire Layer 2 of -- of HiperLAN 2 into Wi-Fi as
14 a proposal.

15 Q. Right. Exactly. And that's DX 58 in your
16 binder. I'll put it on the screen so you can see it.
17 DX 58. And we can look at the cover.

18 And what DX 58 is, is the Ericsson proposal to
19 the IEEE, right? Is that right?

20 A. Yes. And this was very early on in the Wi-Fi
21 development --

22 Q. If --

23 A. -- if I recall it right.

24 Q. -- if you'd just stick to the questions, Mr.
25 Brismark, please?

1 A. I'm sorry.

2 Q. This is the Ericsson contribution to the Wi-Fi
3 standard, right?

4 A. That is my understanding, yes.

5 Q. Right? And we can tell. It actually -- right
6 up here in the top has an IEEE 802.11 document number,
7 right?

8 A. Yes.

9 Q. And it was made by an Ericsson engineer,
10 Gunnar Rydnell, right?

11 A. Yes.

12 Q. All right. And we can see it's got an
13 Ericsson e-mail address, right?

14 A. Correct.

15 Q. And this is Ericsson proposing HiperLAN
16 technology to the 802.11, right?

17 A. Yes.

18 Q. Okay. And isn't it a fact that this
19 contribution was rejected by the members of 802.11
20 because the engineers thought it was complex and not
21 needed for what they wanted to do, right?

22 A. I don't know their rationale for rejection,
23 but it was rejected. That's my understanding.

24 Q. Okay. Well, you obviously testified a lot
25 about the IEEE. You're aware that Ericsson put up a

1 corporate designee, a representative to speak about
2 exactly what happened at the development at IEEE, right?

3 A. Yes.

4 Q. And that's a gentleman by the name of
5 Iwerback, right?

6 A. That's correct, yes.

7 Q. Okay. And he was put up by Ericsson to
8 explain what happened with this, right?

9 A. Yes, that's my understanding.

10 Q. Okay. And he testified on behalf of Ericsson,
11 as you know, that the engineers at the IEEE rejected the
12 sole Ericsson proposal because they thought it was too
13 complex and wasn't needed, right?

14 A. Yes. But if you ask me, I cannot testify on
15 that because I don't know the rationale for rejecting
16 the proposal.

17 Q. Okay. Well, you certainly wouldn't disagree
18 with the corporate representative of Ericsson who
19 explained why Ericsson's proposal was rejected by the
20 IEEE, right?

21 A. No.

22 Q. Okay. And, in fact, you have never even gone
23 to an IEEE meeting, right?

24 A. That's correct.

25 Q. And never even read the IEEE 802.11 standard,

1 right?

2 A. I haven't personally read the specification,
3 that's correct.

4 Q. Okay. And, in fact, this case we've been
5 talking about 802.11n, in particular, right? Is that
6 right?

7 A. Could you repeat the question?

8 Q. In this case, we've been focused on 802.11n,
9 right?

10 A. Yes.

11 Q. And, in fact, if we look at all of 802.11n,
12 it's a fact that Ericsson has never made a single
13 contribution to the 802.11n standard?

14 A. I believe that's correct.

15 Q. That was accepted into the standard, correct?

16 A. I believe that's correct, yes.

17 Q. Okay. And just so we have the timing down,
18 you talked about the five patents-in-suit and you told
19 us when they were filed, right?

20 A. I did.

21 Q. All right. And, in fact, those patents are
22 filed in different dates, '97, '98, '99. But every one
23 of those patents was filed and on the shelf at Ericsson
24 at the time they went to the 802.11 meetings and made
25 the proposal; isn't that right?

1 A. Could you specify the question, please?

2 Q. Isn't it a fact that every one of the patents
3 in this case that we're talking about had already been
4 filed and were on the shelf at Ericsson before Ericsson
5 went to the 802.11 meetings and made its rejected
6 proposal, right?

7 A. Well, I don't know the meaning of "on the
8 shelf." But as I explained earlier, some of them were
9 actually used in 3G, so they were --

10 Q. Can you please, Mr. Brismark -- Mr. Brismark,
11 can you please answer my questions?

12 A. And it will be nice --

13 Q. I'm asking about the IEEE. I'm not asking
14 about the ETSI cellular standards.

15 It is a fact, Mr. Brismark -- and we can go
16 through every one of the patents and we can look at the
17 filing dates -- every one of the patents was filed with
18 the Patent Office by Ericsson before Ericsson attended
19 the 802.11 meetings, right?

20 A. That is correct.

21 Q. All right. And so Ericsson had those
22 patent app -- filed applications submitted with the
23 Patent Office, they had them in Ericsson's offices when
24 they were going to the IEEE to propose whatever they
25 wanted to propose for the IEEE standards. Right?

1 A. That is correct, yes.

2 Q. Okay. And Ericsson -- it was an open
3 standard, and Ericsson could have proposed whatever it
4 wanted, right?

5 A. Absolutely.

6 Q. And Ericsson did propose what it wanted to see
7 in that standard, right?

8 A. We made one proposal, yes, that's right.

9 Q. And that was rejected, right?

10 A. That's my understanding, yes.

11 Q. And as we sit here today, there isn't a single
12 Ericsson contribution proposal of technology that was
13 accepted into the IEEE 802.11n standard, right?

14 A. I believe that to be correct, yes.

15 Q. Okay. Now, let's talk very quickly -- the
16 Wi-Fi standard and where it goes, right?

17 A. Okay.

18 Q. Now, as you've explained, wireless standards
19 can be very complicated, right?

20 A. Yes, they are.

21 Q. Okay. And they can have hundreds of
22 technologies in them, right?

23 A. That's correct, yes.

24 Q. And they can, in fact, have thousands of sub
25 technologies, right?

1 A. I would agree to that, as well, yes.

2 Q. Okay. And so when we think about the Wi-Fi
3 standard, I think you saw it -- if I can just grab my
4 chips over here. Yeah. We saw earlier in the case what
5 a Wi-Fi chip looks like.

6 I'll put it on the ELMO so we can see it.
7 I'll put my thumb next to it so we can get a sense of
8 size, right?

9 And this little black square in the middle,
10 that's a Wi-Fi chip, right?

11 A. I wouldn't know, but I believe you that it is.

12 Q. Okay. So that's been identified as one of the
13 Intel Wi-Fi cards; and that's -- assuming that's
14 correct, that's what a Wi-Fi chip would look like,
15 right?

16 A. Assuming that's correct, then I would agree,
17 yes.

18 Q. Okay. And what happens is the 802.11
19 standards that we're talking about here are actually
20 implemented in this chip, right?

21 A. Yes, they are, to a large extent. That's what
22 I understand.

23 Q. Right. And so that's what happens. So all
24 these hundreds of technologies get shrunk down and put
25 into that one little chip, right?

1 A. Yes.

2 Q. Okay. And, in fact, the Wi-Fi companies
3 themselves have hundreds, if not thousands, of
4 engineers; is that right?

5 A. I believe I'm not the right person to testify
6 on that.

7 Q. Do you have any doubt that Intel, for example,
8 has hundreds, if not thousands, of engineers?

9 A. No, I don't.

10 Q. Okay. And Intel is just one of the Wi-Fi
11 companies making the Wi-Fi chips, right?

12 A. That's my understanding, yes.

13 Q. Right. And, in fact, those Wi-Fi chip
14 companies put billions of dollars of their own R&D into
15 developing their products and technologies, right?

16 A. I don't know the amount of money that is put
17 into R&D.

18 Q. Do you have any doubt that Intel spends
19 billions of dollars in R&D?

20 A. I would not have a doubt, no, that's correct.

21 Q. Okay. And Intel is just one of the many Wi-Fi
22 chip companies, right?

23 A. Yes.

24 Q. Okay. And so we know that these -- the Wi-Fi
25 standard goes into this chip, right?

1 A. Yes.

2 Q. And we saw in the opening a bunch of licenses,
3 right? You were here for the opening?

4 A. I was here at the opening, yes.

5 Q. Okay. And at the opening we saw a slide -- a
6 slide that looked like this?

7 A. Yes.

8 Q. Right? And it listed Ericsson 802.11n
9 licenses?

10 A. Yes, that's some of them.

11 Q. All right. And, in fact, there's not a single
12 chip maker listed on that list of licensees, right?

13 A. Correct.

14 Q. And, in fact, there's lots of chip makers that
15 make the chips that make all these Wi-Fi products
16 actually do Wi-Fi, right?

17 A. Yes.

18 Q. Okay. There's Broadcom, right, chip maker,
19 right?

20 A. Correct.

21 Q. Qualcomm, Atheros, right?

22 A. Correct.

23 Q. Ralink, right?

24 A. Yes.

25 Q. Realtek, right?

1 A. Yes.

2 Q. And there are more, right?

3 A. Excuse me?

4 Q. And there are more, right?

5 A. I don't know them.

6 Q. Okay. And none of those, Qualcomm, Broadcom,
7 Atheros, Ralink, Realtek, Intel have agreed to take a
8 license of these patents, right?

9 A. That is correct.

10 Q. Okay. And, in fact, Intel, one of the chip
11 makers of the Wi-Fi chips, had to ask to get into this
12 case, right?

13 A. My understanding is that Intel intervened
14 this --

15 Q. Yes.

16 A. -- process.

17 Q. So you put the lawsuit together. You're one
18 of the people who said you approved the lawsuit, right?

19 A. Yes.

20 Q. Okay. And you didn't sue Intel, did you?

21 A. No, we sued the end user product.

22 Q. Right. You sued Intel's customers, right?

23 You sued Intel's customers, among other customers,
24 right?

25 A. We sued the end user product manufacturers.

1 Q. That use Intel parts, right?

2 A. Some of them do. I don't know if all of them
3 do.

4 Q. You have no doubt you sued Intel's customers,
5 right?

6 A. Some of the companies that we sued are
7 customers of Intel. I have no doubt of that.

8 Q. Okay. And Intel -- but you didn't sue Intel,
9 right?

10 A. Excuse me?

11 Q. You didn't sue Intel, right?

12 A. No, we did not.

13 Q. All right. And Intel is the company that
14 makes the chip that the Wi-Fi standard actually goes on,
15 right?

16 A. Correct.

17 Q. And Intel had to ask and voluntarily come into
18 this case, right?

19 A. I don't think they had to.

20 Q. Well --

21 A. My understanding is they voluntarily did so.

22 Q. Intel decided to put itself in the line of
23 fire in this case and subject itself to all the issues
24 that are being decided in this case voluntarily. It
25 wasn't sued, right?

1 A. Yes, my understanding they did so voluntarily.

2 Q. Okay. And it's a fact, isn't it, right,
3 Intel -- what Intel came here to say, what Intel is
4 saying in this case, as one of the designers of the
5 actual products, the chips, that In -- that Wi-Fi --
6 that, in fact, these five Ericsson patents are not
7 essential at all and that the Wi-Fi standard is
8 different; isn't that correct?

9 A. I believe Intel is claiming that, yes.

10 Q. Okay. So now while we're talking about
11 patents, I want to stick with this issue of essential
12 patents and go into that in a little bit more detail.
13 Okay?

14 A. Okay.

15 Q. Now, just so we have the terminology right,
16 generally speaking, when we're talking about an
17 essential patent, we're talking about a patent that
18 covers the standard, meaning that you can't practice the
19 standard without infringing the patents, right?

20 A. That is correct, yes.

21 Q. Okay. Now, you'd agree with me just calling a
22 patent essential doesn't make it essential? You
23 actually have to take that patent and do a detailed
24 analysis against the standard, right?

25 A. Correct.

1 Q. Right. So you basically have to show that
2 it's actually in there, right?

3 A. Yes.

4 Q. Okay. And since you haven't even read the
5 Wi-Fi standard, you can't do that analysis of taking the
6 patents and comparing them and saying that they're in
7 the Wi-Fi standard, right?

8 A. I haven't personally read the standards, so --

9 Q. And so --

10 A. -- it wasn't me doing that analysis. That's
11 correct, yes.

12 Q. Right. Okay. And so that's not what you're
13 here to talk about, right? That's for other witnesses,
14 right?

15 A. Yes.

16 Q. Okay. Good.

17 And, you know, it's a fact actually, though,
18 that many times companies will say their patents are
19 essential and they're actually not, right?

20 A. If it's a fact, it's -- it's my view that that
21 is often the case, that companies who have declared
22 patents being standard essential also can be proven
23 wrong in that case, yes.

24 Q. All right. And, in fact, you made a
25 presentation to that effect, right, in 2009 -- you

1 recognize this document?

2 A. Is that another exhibit or --

3 Q. Yes, it's Exhibit 85.

4 A. DX 85?

5 Q. Yes.

6 A. Thank you. Yes, I recognize this.

7 Q. Right. That was written by Gustav Brismark.

8 That's -- that's you, right?

9 A. That would be me, yes.

10 Q. Yeah. It was written in January of 2009 and
11 presented to a European government agency, right?

12 A. Yes, that's correct.

13 Q. Okay. And let's take a look at what you said
14 in there.

15 I'm going to go to Page 11 in the document.
16 I'll put it on the screen for everybody to see. I'll
17 make it a little bigger.

18 You have Page 11?

19 A. Yes, I do.

20 Q. Okay. And you can see here what it says is:
21 Many of the patents and patent applications declared to
22 be essential to a standard are not essential.

23 Right?

24 A. That is correct, yes.

25 Q. Right. And that's actually a pretty important

1 distinction, isn't it, between essential and not
2 essential?

3 A. Is that a question?

4 Q. It's a question. It's a pretty important
5 distinction between a patent being essential and not
6 essential, right?

7 A. What is distinction?

8 Q. Whether the patent is essential or not
9 essential is an important distinction, right?

10 A. Yes, it is.

11 Q. Okay. And, in fact, some people in this
12 industry have said over-declaration of essential patents
13 is actually a big problem, right?

14 A. It's a problem in -- in ETSI, I would agree to
15 that.

16 Q. Yeah.

17 A. Because there you make detailed declarations
18 of individual patents.

19 Q. Right. And so there's actually -- the reason
20 is that there's an interest for companies to say they
21 have lots of essential patents because then they can say
22 they have lots of patents covering the standard, right?

23 A. I would agree, yes.

24 Q. Right.

25 A. A general statement, yes.

1 Q. But what happens actually is when you dig down
2 deep and you look at what all -- a lot of these
3 companies are saying that they're essential patents, you
4 find out those patents, when you compare them to the
5 standard, actually aren't being used as a standard at
6 all and are not essential?

7 A. Are you talking about all the declared patents
8 in ETSI now?

9 Q. I'm talking about, generally speaking, when
10 companies say they're essential patents, you often
11 find -- if you want to talk about ETSI, that's fine.
12 Because many companies have declared patents essential
13 in ETSI, right?

14 A. That's correct, yes.

15 Q. Including Ericsson, right?

16 A. Including Ericsson, yes.

17 Q. Right. And it's a fact when you dig down into
18 all those declarations, you find that many of the
19 patents are, in fact, not used in the standard at all,
20 right?

21 A. Correct.

22 Q. And what I found interesting about some of
23 your testimony yesterday is how you characterized the
24 IEEE letters. And so let's talk about the IEEE process
25 of dealing with declarations or claims by companies to

1 have essential patents, okay?

2 A. Okay.

3 Q. And I think you showed us one of the letters
4 of assurance. And this is actually your exhibit. It's
5 PX 294.

6 You know this document, right?

7 A. Yes.

8 Q. Okay. And it's a letter of assurance for
9 essential patent claims, and you pointed it out and this
10 is to the Institute of Electronic -- Electrical and
11 Electronic Engineers. That's the IEEE, right?

12 A. That is correct, yes.

13 Q. Right. And this is from Ericsson, right?

14 A. Yes.

15 Q. Okay. And let's look at what -- this is
16 actually a form that the IEEE has. I'm going to blow up
17 the language I want to focus on, see if I can make it
18 any bigger. There we go.

19 And the fact is that these are declarations by
20 the company, but the IEEE doesn't, in fact, do anything
21 to determine whether these are declarations of patents
22 that are really essential or declarations of patents
23 that are going to turn out to be non-essential, right?

24 A. That's correct.

25 Q. And, in fact, we see that in the language, and

1 it's very important language that is in every letter of
2 assurance in the IEEE.

3 And it says: The IEEE takes no position with
4 respect to the validity or essentiality of patent
5 claims.

6 Right?

7 A. Correct.

8 Q. Okay. And so we know that this is just a
9 submission of a form from a company like Ericsson to the
10 IEEE saying Ericsson believes it may have essential
11 patents, but the IEEE is not doing any analysis or
12 agreeing with Ericsson that any of those patents are
13 actually used in the standard, right?

14 A. That is correct.

15 Q. Okay. And you showed us a letter from the
16 IEEE to Ericsson as Exhibit 511. You talked about that
17 in your direct, as well, right?

18 A. I did, yes.

19 Q. Okay. And if we look at that letter from the
20 IEEE, it has a date -- I'll make this again bigger --
21 March 30th, 2011, right?

22 A. Yes.

23 Q. Okay. When was this case filed, what year?

24 A. This case we talk about here?

25 Q. Yes.

1 A. Was filed in 2010.

2 Q. Right. So this letter is almost a -- a year
3 after this case was filed, right?

4 A. That is correct.

5 Q. Right. And what the IEEE actually says in its
6 letter to Ericsson is: It has been brought to my
7 attention that Ericsson may have essential patent
8 claims.

9 Right?

10 A. Correct, yes.

11 Q. So the IEEE wasn't making any determination
12 that the Ericsson patents in this case were, in fact,
13 essential, right?

14 A. That's correct.

15 Q. In fact, the IEEE never even looked at the
16 issue, right?

17 A. The IEEE didn't do any analysis of patents.
18 That's my understanding, yes.

19 Q. Right. And, in fact, the reason this was sent
20 is because Ericsson filed this lawsuit claiming it had
21 essential patents; and the IEEE said, you claim you may
22 have some essential patents, we're not dealing with that
23 issue at all, but if you end up being right, we want to
24 make sure there's an obligation to license. Right?

25 A. I don't know -- that was a very long statement

1 or question, so could you please repeat your question?

2 Q. You would agree with me the letter was sent
3 after this lawsuit, right?

4 A. Yes.

5 Q. Okay. And the letter was sent actually
6 because somebody raised, with the IEEE, the fact that
7 Ericsson had filed a case where Ericsson said the
8 patents were essential, right?

9 A. I don't know who writes within IEEE, so I
10 couldn't answer that question.

11 Q. Okay. So you have no idea why this letter was
12 sent then, right?

13 A. I know we received it. I don't -- don't know
14 why it was sent.

15 Q. Okay. So you would agree with me that after
16 the -- before the letter was sent, this case had been
17 filed and Ericsson said it had essential patents, right?

18 A. Yes.

19 Q. The five patents in this case, right?

20 A. Correct.

21 Q. Okay. And before it was sent, the Defendants
22 actually said: You're wrong. We believe that we
23 designed our own technology, and, in fact, those patents
24 are not essential. Right?

25 A. I don't know that.

1 Q. Okay. You don't know that in this case every
2 one of the Defendants has said that the IEEE standard is
3 different than Ericsson patents?

4 A. No, I don't know if they stated that as
5 clearly. I don't think they admitted -- admitted in our
6 negotiations, but --

7 Q. Do you have any doubt that the whole reason
8 we're here is that the Defendants are saying that the
9 standard is different and they designed their own
10 technology, after hearing Mr. Van Nest's opening?

11 A. I think there are multiple areas where there's
12 disagreement.

13 Q. Do you have any -- would you please answer my
14 question?

15 Do you have any doubt, after hearing Mr. Van
16 Nest's opening, that the reason the Defendants are here
17 is they're saying they designed their own technology,
18 their own standard; and, in fact, the Ericsson patents
19 are not essential to and do not cover the 802.11
20 standards?

21 A. Yes, I have doubts regarding that.

22 Q. Okay. Well, we'll let the defense witnesses
23 explain that, okay?

24 A. Okay.

25 Q. But let's take a look at your testimony about

1 this letter. And I want to be very clear.

2 So you were asked: And now -- they're talking
3 about this letter from IEEE that we were just looking
4 at. And now the IEEE --

5 MR. AROVAS: Make it even a little
6 bigger.

7 Q. (By Mr. Arovas) And now the IEEE is telling
8 Ericsson: Gosh, we've come up with this new standard,
9 and you have some essential patent claims. Will you
10 give us another letter of assurance and let us tell
11 everybody that you're willing to license those essential
12 patents and RAND terms?

13 And you said yes, right?

14 A. Yes.

15 Q. So the fact is -- this is -- and this is your
16 trial testimony from yesterday, right?

17 A. That is correct.

18 Q. Okay. The fact is, the IEEE wasn't saying
19 anything of the sort; isn't that right?

20 A. They did not say that we have essential
21 patent, that is correct.

22 Q. All right. So when you testified under oath
23 yesterday that the IEEE in this letter was saying that
24 Ericsson had essential patents, that is completely
25 wrong, right?

1 A. I would agree to that, yes.

2 Q. All right. So the IEEE wasn't saying anything
3 of the sort. What the IEEE was saying: You say you
4 have some essential patents; we're not going to analyze
5 the issue to figure it out. Right?

6 A. Correct.

7 Q. Okay. And, in fact, the very first time that
8 we're going to have an opportunity in a court to figure
9 out the answer to that question about whether these
10 patents are essential or not, is right here in this
11 trial, right?

12 A. Yes.

13 Q. Okay. Let me ask you just a few more
14 questions about patents while we're on that topic.
15 You would agree with me that one of the ways
16 to figure out who has the essential patents in a
17 particular standard is who has been active in making
18 contributions to that standard, right?

19 A. Sometimes, yes.

20 Q. Okay. And that's actually something that you
21 explained in your deposition, that that's one of the
22 ways to figure out who may have essential patents,
23 right?

24 A. In some standardization activities, that would
25 be true, yes.

1 Q. Right. And, in fact, in the 802.11 standards
2 themselves, there have been over 35,000 technical
3 contributions to make up those standards, right?

4 A. I don't know.

5 Q. And there's been over 2,000 technical
6 contributions to 802.11n, right?

7 A. I don't know that either.

8 Q. Okay. And it's a fact, isn't it, that the
9 chip makers are the major contributors of technology to
10 the 802.11 standard, right?

11 A. I wouldn't be able to answer that question
12 either. I'm sorry.

13 Q. Well, you would certainly know that the chip
14 makers are Broadcom, Qualcomm, Intel, companies like
15 that, right?

16 A. Yes. I know they participate.

17 Q. Okay. And certainly the people who are
18 familiar with the IEEE can tell us much better than you
19 can who was making the technical contributions that made
20 up the standards that we care about in this case, right?

21 A. I would agree to that, yes.

22 Q. Okay. But you will agree with me that you do
23 know that component suppliers like the chip makers have
24 essential patents, right, to the 802.11 standards,
25 right?

1 A. Could you repeat the question?

2 Q. You would agree with me, wouldn't you, that
3 component suppliers are holders of essential patents in
4 the wireless LAN space, right?

5 A. I wouldn't know that for sure as I haven't
6 been part of investigating that or analyzing that or
7 neither has my company.

8 MR. AROVAS: Actually, let's play Clip LB
9 4, if we could.

10 Q. (By Mr. Arovas) And I'm going to just play for
11 you a question and answer that you were asked in your
12 deposition under oath, right?

13 (Video clip playing.)

14 QUESTION: Are any component suppliers
15 major holders of patents in the wireless LAN space?

16 ANSWER: I do believe that there are
17 companies in the component space who have essential
18 patents, yes.

19 (End of video clip.)

20 Q. (By Mr. Arovas) Okay. And it's a fact -- that
21 that was your testimony, right?

22 A. Yes.

23 Q. Under oath, right?

24 A. Yes.

25 Q. Okay. And it's a fact, isn't it, that Intel

1 is one of the companies that's been quite active in the
2 802.11 standardization; is that right?

3 A. That's my understanding, yes.

4 Q. And you believe that Intel actually has a
5 position -- is in a position to have a large number of
6 essential patents to the 802.11 standards, right?

7 A. I believe, but I don't know.

8 Q. Okay. And, of course, this isn't just a
9 discussion that we're having here; this issue of who has
10 the essential patents in the wireless LAN space is
11 something that's been discussed internally at Ericsson,
12 right?

13 A. Yes.

14 Q. Right?

15 A. Yes.

16 Q. In fact, if we look at Defendants'
17 Exhibit 81 -- and I'll put it on the screen and make it
18 smaller again, so we can see what document we're talking
19 about.

20 You should have it in your binder,
21 Mr. Brismark.

22 A. Yes, I have.

23 Q. Okay. You see Defendants' Exhibit 81. And
24 that's an Ericsson internal document that was produced
25 for the first time in this case, right?

1 A. Yes.

2 Q. Okay. And if we look inside that document to
3 try to figure out what was discussed, we'll see a page
4 called: Situation analysis: Exposure. Right?

5 A. Yes.

6 Q. And this is actually a page where Ericsson's
7 talking about, well, hey, wait a second; we may be
8 worried about other people's essential patents, right?

9 A. It discusses to which extent Ericsson's sales
10 of wireless LAN products is exposed to different
11 companies' products, yes.

12 Q. Well, right. And that's because, when
13 Ericsson decided it wanted to get back in the Wi-Fi
14 business, it actually bought a company called BelAir to
15 get the products and expertise to enter -- or re-enter
16 Wi-Fi, right?

17 A. That's correct.

18 Q. Okay. And what we can see here, if we look at
19 what Ericsson said in its internal documents, actually,
20 the wireless LAN patents are mainly held by chipset
21 suppliers. That's what it says, right?

22 A. Yes, that's what it says.

23 Q. Thank you.

24 MR. AROVAS: No further questions.

25 MR. CAWLEY: Redirect, Your Honor?

1 THE COURT: Yes, you may.

2 REDIRECT EXAMINATION

3 BY MR. CAWLEY:

4 Q. Mr. Brismark, I just want to ask you a few
5 questions to clarify some of the things you've just been
6 asked about.

7 Why haven't you personally spent time reading
8 the 802.11 standard?

9 A. I haven't done it personally because of the
10 fact that we have -- well, I have an organization of
11 portfolio managers and technical experts, and the
12 analysis has been done by the experts and the teams that
13 I -- which I manage.

14 Q. All right. So are there people on your team
15 that you're responsible for managing who divide up
16 responsibility for various standards that they are going
17 to become familiar with?

18 A. Yes, that's the situation we're in.

19 Q. And if you need to know what's in those
20 standards, can you talk to basically an expert in-house
21 whose job it is to know about those standards?

22 A. Yes.

23 Q. And in addition to the standards that we
24 already talked about on your direct examination, do you
25 remember when Intel's lawyers just rattled off -- I

1 don't know -- probably a dozen different
2 standard-setting bodies?

3 A. Yes.

4 Q. And is it the case that many of those
5 standard-setting bodies might have many standards that
6 that body produces?

7 A. Absolutely, yes.

8 Q. And is it the case that for many of those
9 standards, such as we've seen with 802.11, there may be
10 many different varieties and amendments to those
11 standards?

12 A. Yes.

13 Q. Is it even possible, in your judgment, that a
14 single person could be technically familiar with all of
15 those relevant standards?

16 A. No, it's not possible.

17 Q. Earlier in your career, did you personally
18 participate in standard-setting organizations?

19 A. Yes, I did.

20 Q. Did you personally attend some meetings, for
21 example, where different standards were discussed and
22 the standard-setting process was carried out?

23 A. Yes. I've been participating in ETSI meetings
24 in the early standardization of 3G. I also participated
25 in Japan in the corresponding standardization bodies.

1 And upon occasion, in a 3GPP meeting when that
2 was --

3 Q. So that's -- that's -- that and your other
4 work in this field is the basis for your testimony to
5 the jury about how standard setting works, even though
6 you personally haven't attended any 802.11 standards
7 meetings?

8 A. Yes, that would be correct.

9 Q. Now, let me ask you a couple of questions
10 about Defendants' Exhibit 98.

11 MR. CAWLEY: If we could see it.

12 Q. (By Mr. Cawley) Do you remember this document,
13 and you were asked some questions about it?

14 MR. CAWLEY: If we could go to Page 2 of
15 it.

16 A. Yes.

17 Q. (By Mr. Cawley) Do you remember this, and
18 Intel's lawyers showed you a chronology, and I think
19 that he finally was attempting to make the point that
20 Ericsson had abandoned its work in WLAN activity?

21 A. Yes. That was my understanding, yes.

22 Q. All right. Let's go to the next page that
23 Mr. -- that Intel's lawyers did not show you.

24 MR. CAWLEY: And let's -- let's enlarge
25 that language at the very top.

1 Q. (By Mr. Cawley) What does the last line said
2 (sic)?

3 A. It reads R&D in the wireless LAN area have
4 been restarted again -- within Ericsson again, but this
5 time as a part of the coming 4G.

6 Q. Despite the language that Intel's lawyers led
7 you through, does this part that he didn't show the jury
8 say that Ericsson has restarted its research and
9 development in the WLAN area?

10 A. Correct. That's what it says.

11 Q. Now, let's turn quickly to another document
12 you were asked about, and that's Plaintiffs' Exhibit 58.

13 A. Yes.

14 Q. That's Defendants' Exhibit 58. Apologize.
15 Do you have that in front of you?

16 A. I do.

17 Q. We'll get it up on the screen here.

18 Now, this is, if I'm correct, the contribution
19 that Ericsson made to the 802.11 standard-setting body
20 that was rejected as too complicated.

21 A. Yes.

22 Q. Now, help -- help orient us, something here,
23 because a big point was made of this by the Defendants'
24 lawyers in opening yesterday about this rejected
25 contribution, and Intel's lawyer has just done the same

1 thing, taking you through this contribution that was
2 rejected.

3 What version of 802.11 are we talking about in
4 this case of the Ericsson patents being standard
5 essential to?

6 A. I would have to look through, but I believe
7 it --

8 Q. No. In this case. Not in that document, but
9 in this case. What is -- what version of 802.11 is
10 Ericsson saying these five patents are essential to?

11 A. In this case, we talk about 802.11n.

12 Q. 802.11n as in November?

13 A. Correct.

14 Q. Look at the last page of this document, if you
15 would.

16 A. Yes.

17 Q. Does this tell us which version of 802.11 was
18 being discussed when Ericsson made this submission?

19 A. Yes. At the time of this submission, I
20 typically was discussing the 11e version.

21 Q. This is a different version of 802.11 that
22 we're talking about in this case?

23 A. Yes.

24 Q. And that's what was rejected?

25 A. Yes.

1 Q. Not a contribution for 802.11n as in November?

2 A. Correct.

3 Q. What was the date of this document, this
4 submission, this contribution that was rejected?

5 A. The date of the contribution was May 8th in
6 the year of 2000.

7 Q. 2000.

8 What is your understanding of when IEEE first
9 began working on 802.11n?

10 A. They started working on "n," in my
11 understanding, three to four years after this
12 contribution.

13 Q. Three to four years after --

14 A. Yes.

15 Q. -- this contribution was rejected?

16 A. Yes.

17 Q. Okay. Let's look at, quickly, Defendants'
18 Exhibit 85. This is a document -- or something you
19 prepared, wrote for a presentation within Ericsson?

20 A. Yes.

21 Q. And on Page 11, let's remember, that you
22 stated at the bottom there that: Many of the patents
23 and patent applications declared to be essential to a
24 standard are not essential.

25 A. Yes.

1 Q. When you wrote that, were you referring to the
2 industry practice as a whole or to Ericsson in
3 particular?

4 A. I was referring to the industry's practice as
5 a whole. And in particular, some companies, we believe,
6 have different practices.

7 Q. Okay. Other companies that you believe have
8 taken advantage of the standard-setting process, or at
9 least been careless?

10 A. Yes.

11 Q. Okay. Finally, let's turn to Plaintiffs'
12 Exhibit 294.

13 A. 249?

14 Q. 294.

15 A. Plaintiffs'. Okay.

16 Q. You were asked some questions about this both
17 on your direct and cross-examination. Tell us what this
18 document is again.

19 A. This document is a letter of assurance from
20 Ericsson to the IEEE where we commit to license our
21 essential patents to 802.11n under RAND conditions.

22 Q. And did this assurance -- this is the second
23 letter of assurance, right? There was one originally in
24 2003?

25 A. Yes.

1 Q. And this is the letter of assurance that
2 Ericsson gave in response to the request that we saw
3 from the IEEE saying: It's come to our attention that
4 you may have standard essential patent claims?

5 A. Correct.

6 Q. Was this letter of assurance limited to
7 certain patents?

8 A. No.

9 Q. It didn't identify any specific patents at
10 all, did it?

11 A. No, it did not.

12 Q. What was the nature of the assurance in this
13 letter?

14 A. The nature of this assurance is that Ericsson
15 is willing to license any patent we may own now or in
16 the future which is essential to the 802.11n standard.

17 Q. Thank you, Mr. Brismark.

18 MR. CAWLEY: I'll pass the witness, Your
19 Honor.

20 THE COURT: All right. Any recross?

21 MR. AROVAS: Yes. Just very, very
22 briefly, Your Honor.

23 THE COURT: All right.

24 RECROSS-EXAMINATION

25 BY MR. AROVAS:

1 Q. Let's go back very quickly -- let me get the
2 camera up -- to this document.

3 A. Yes.

4 Q. Okay. The Ericsson contribution to 802.11.

5 Now, this case, we're talking about --

6 A. Excuse me. Could you help me with the exhibit
7 number?

8 Q. Oh, Exhibit 58. It's the one that you just
9 discussed with Mr. Cawley a few seconds ago?

10 A. Yes, I know. I just didn't remember the
11 reference number.

12 Q. Okay.

13 A. I'm sorry.

14 Q. And it's a fact that in this case, Ericsson's
15 accusing two features QoS and block acknowledgment in
16 the 802.11 standards, right?

17 A. Those are important features which our patents
18 relate to, yes.

19 Q. That's -- that's -- that's what Ericsson is
20 accusing in this case. Those are the two specific
21 technologies we're going to talk about in this case,
22 right?

23 A. That may be the case.

24 Q. You understand that, right?

25 A. I understand that our patents are related to

1 those features, yes.

2 Q. Okay. Okay. And so it's a fact, isn't it,
3 that the technology, okay, for 802.11n, for those two
4 features comes out of 802.11e, the very standard that
5 Ericsson made a proposal to, right?

6 A. That's not clear to me.

7 Q. So you wouldn't know -- you wouldn't know one
8 way or the other, right?

9 A. I don't know whether it was included -- what
10 was included in 11e, no.

11 Q. Okay.

12 A. That's correct.

13 Q. But certainly we're going to have a lot of
14 IEEE witnesses coming to this case, and they would know
15 better than you, right?

16 A. I think they know better than me on this
17 question, absolutely.

18 Q. Okay. But the fact is that what we do know is
19 Ericsson was -- knew how to make proposals to the IEEE,
20 right?

21 A. I apologize. Could you repeat the question?

22 Q. It's a fact Ericsson knew how to make
23 proposals to the IEEE, right?

24 A. Yes, we did.

25 Q. Ericsson could have proposed whatever

1 technology it wanted, right?

2 A. Yes, we could do that.

3 Q. Okay. And at the end of the day, for all of
4 the IEEE standards -- they build one on top of
5 another -- there isn't a single contribution, either
6 directly or indirectly, that's used in 802.11n --
7 contribution from Ericsson that was accepted by the
8 IEEE, right?

9 A. Correct.

10 Q. Thank you.

11 MR. AROVAS: No further questions.

12 THE COURT: Any further redirect?

13 MR. CAWLEY: No further questions, Your
14 Honor.

15 THE COURT: All right. Thank you.

16 All right, Ladies and Gentleman of the
17 Jury, if you would, pass down your witness sheet for
18 the -- any questions you might have for the witness.

19 (Pause in proceedings.)

20 THE COURT: All right, Ladies and
21 Gentleman. We're going to take our morning break at
22 this time, and so I'm going to -- we're going to be in
23 recess until five minutes till 11:00.

24 So enjoy your morning break. Please
25 remember my instructions. Don't discuss this case among

1 yourselves or with anyone else, and we'll see you back
2 here at five till 11:00.

3 COURT SECURITY OFFICER: All rise.

4 (Jury out.)

5 THE COURT: All right. Please be seated.

6 We had one question for the witness,
7 which reads: At the time the IEEE received Ericsson's
8 letter of assurance, did the IEEE double-check/verify
9 that Ericsson actually had a valid claim, question mark?

10 And then that is X'd out, and then
11 further it says: Answered in cross. Thank you.

12 So I think that question was answered,
13 but I wanted to share it with the parties.

14 All right. We'll be in recess until five
15 till.

16 COURT SECURITY OFFICER: All rise.

17 (Recess.)

18 COURT SECURITY OFFICER: All rise for the
19 jury.

20 (Jury in.)

21 THE COURT: Please be seated.

22 All right. We didn't have -- we had one
23 question for that witness, but it was answered on
24 cross-examination, the person said, so we don't have any
25 further questions for the witness.

1 Let me ask -- I failed to ask at the
2 beginning of the day, does either side have any exhibits
3 that they wish to offer for today that are unobjected
4 to?

5 MS. MOORE: Yes, Your Honor, we do.
6 However, we had a number of objections for a significant
7 number of exhibits dropped this morning right before
8 trial, so we'd like to put together a final list and
9 give it to Your Honor perhaps right after lunch.

10 THE COURT: Okay. That will be fine.

11 MS. MOORE: Thank you.

12 THE COURT: All right. Thank you.

13 MR. DE VRIES: And good morning, Your
14 Honor. We do have a list on behalf of the Defendants of
15 preadmitted exhibits that have been agreed to.

16 THE COURT: All right. And what is that
17 titled?

18 MR. DE VRIES: Defendants' List of
19 Preadmitted Exhibits for June 4th, 2013.

20 THE COURT: All right. We'll mark that
21 as Defendants' Exhibit List No. 2. Are there any
22 objections to the exhibits contained on that list?

23 MS. MOORE: No, Your Honor.

24 THE COURT: All right. They're admitted.
25 All right. You may call your next

1 witness.

2 MR. CAWLEY: Thank you, Your Honor.

3 At this time, we'd like to play two video
4 depositions, and the parties have agreed to a very brief
5 introduction to be read to the jury, with the Court's
6 permission, about what these depositions are.

7 THE COURT: All right. Very well.

8 Let me -- before you do that, though, Mr.
9 Cawley, let me give the jury this instruction just
10 regarding depositions.

11 Certain testimony in this case is going
12 to be presented to you in the form of a deposition. And
13 in, I believe, almost every case, it will be a video
14 deposition.

15 And video depositions are where it's
16 taken in video, and you'll watch the actual testimony.
17 A deposition is the sworn recorded answers to questions
18 asked a witness in advance of trial.

19 Under some circumstances, if a witness
20 cannot be present to testify from the witness stand,
21 then the witness's testimony may be presented under oath
22 in the form of a deposition.

23 Sometime before this trial, attorneys
24 representing the parties in this case questioned this
25 witness under oath. A court reporter was present and

1 recorded the testimony.

2 This deposition testimony is entitled to
3 the same consideration and is to be judged by you as to
4 credibility and weight and otherwise considered by you,
5 insofar as possible, the same as if the witness had been
6 present and had testified from the witness stand in
7 court.

8 Now, as I said, these depositions can
9 either be in typed form, where you may see an attorney
10 ask -- in cross-examining a witness, may say: Well,
11 didn't you say on your deposition thus and so, and
12 they'll show them the page on the overhead or -- most of
13 the depositions today are videotaped as well.

14 And then when the attorneys get ready for
15 trial, they will get together, and the Plaintiff will
16 say, I want these pages and line numbers, and the
17 Defendant will say, I want these pages and line numbers,
18 and they edit it down.

19 So a deposition that may take two or
20 three hours, you may hear a 10- or 15-minute excerpt
21 from it. And that's to say you -- save you time and to
22 just play what the parties believe is relevant for the
23 jury to hear with regard to the issues in the case at
24 this time.

25 So Mr. Cawley will introduce the video

1 and tell you a little bit about who the witness is, and
2 then we'll play the deposition.

3 MR. CAWLEY: Thank you, Your Honor.

4 Ladies and Gentleman, next you will hear
5 the video or -- and see the video deposition of Mikael
6 Larsson. Mr. Larsson is an engineer at Ericsson and is
7 a named inventor on the '625 patent.

8 Your Honor, Ericsson has designated
9 11 minutes and 10 seconds of this testimony, and
10 Defendants have designated 4 minutes and 20 seconds. So
11 the whole deposition lasts 15 minutes.

12 THE COURT: Thank you. You may proceed.

13 (Video playing.)

14 QUESTION: Okay. I'd like to shift
15 gears. Could you please introduce yourself for the
16 jury?

17 ANSWER: Okay. So I'm Mikael Larsson, or
18 Michael, if you want to pronounce it that way. I'm 47.
19 Will be 48 this year.

20 I'm married with Jenny. We live up north
21 of Stockholm. And we have a detached house together,
22 and we live there together with our three kids. We
23 have -- the youngest is 7, and the middle one is 12, and
24 the oldest is 15.

25 QUESTION: And are you one of the

1 inventors on the '625 patent?

2 ANSWER: Yes.

3 QUESTION: Are you the only inventor?

4 ANSWER: No. We also have Peter.

5 QUESTION: And were you at Ericsson when
6 you came up with your invention?

7 ANSWER: Yes.

8 QUESTION: Can you tell us what you did
9 before you joined Ericsson?

10 ANSWER: Before Ericsson, I went to the
11 university. And after that, I went to the service in
12 the Army.

13 QUESTION: What did you study at
14 university?

15 ANSWER: I studied electrotechnical,
16 Master of Science for that.

17 QUESTION: And you said, after that, you
18 joined the military for one year of service?

19 ANSWER: Yes.

20 QUESTION: And what did that entail?

21 ANSWER: That is something that is
22 mandatory within Sweden to do that. So everyone has to
23 make almost a year or more within the service. At least
24 that was -- at that time, it was mandatory.

25 QUESTION: They don't do that anymore?

1 ANSWER: No. Now it's optional,
2 actually.

3 QUESTION: And when did you join
4 Ericsson?

5 ANSWER: '89.

6 QUESTION: How did that happen?

7 ANSWER: I applied for a job as a
8 hardware designer directly after the military service.

9 QUESTION: And what were you doing -- at
10 Ericsson before the work that led to your patent?

11 ANSWER: I've been working with the ATM
12 and building ATM switches for quite some years. And,
13 also, I had worked with a similar system, which was NTT
14 DOCOMO.

15 And so the combination of ATM as a
16 background and experience of wireless made a good
17 starting point.

18 QUESTION: And what work were you doing
19 when you arrived at your invention?

20 ANSWER: Sorry.

21 QUESTION: What work were you doing when
22 you arrived at your invention?

23 ANSWER: We were working with medium
24 access control layer of this prototype of wireless ATM.

25 And Peter was the one that come up with

1 the problem. I think he was listening to some multicast
2 presentation of one of the institutes where he -- I
3 think he thought that presentation was extremely boring,
4 so his mind was wandering off to something else.

5 And then he come up with the problem that
6 discarding -- or that discarding packets when we have
7 ARQ might be a problem. And then we were starting to
8 work on the solution for that.

9 QUESTION: And you mentioned Peter. At
10 what point, did you meet Peter Larsson?

11 ANSWER: I met him just before we went
12 down to Singapore. That was '9 -- probably -- probably
13 the beginning of '97.

14 QUESTION: So the work on your patent was
15 done in Singapore?

16 ANSWER: Yes, it was.

17 QUESTION: How did it -- how did it come
18 to pass that you went to Singapore?

19 ANSWER: I think Ericsson had an interest
20 to try to institute --

21 THE REPORTER: Try to institute...

22 ANSWER: -- institute a Singapore list of
23 universities to see if they were good to cooperate with.

24 QUESTION: How was your experience in
25 Singapore?

1 ANSWER: Very good. It was a very nice
2 stay there. It's warm, a bit humid, but very easy
3 living, actually.

4 QUESTION: So you met Mr. Larsson when
5 you went down to Singapore. And how long did it take
6 for the two of you to come up with the invention?

7 ANSWER: You mean after we have
8 understood the problem?

9 QUESTION: Yes.

10 ANSWER: I'm not really sure. But I
11 guess it took a few months at least. So we spent a
12 number of days, weeks even, I would say, in front of a
13 whiteboard going back and forth with scenarios and
14 alternatives and trying to understand how it should
15 be -- behave, the mechanism, in order to make it
16 bulletproof when it comes to fault situations and so on.

17 QUESTION: And could you summarize what
18 it was that you two arrived at as the invention?

19 ANSWER: What we did was a mechanism that
20 allows an ARQ mechanism to discard packets and still
21 move on forward without having to retransmit everything
22 in case it's outdated.

23 QUESTION: And at what point in your
24 collaboration did you decide that you had something
25 worth patenting?

1 ANSWER: I think we understood that right
2 away; that the problem as such is worth taking a patent
3 on.

4 QUESTION: And what did you do to see
5 that your solution would work?

6 ANSWER: How it worked?

7 QUESTION: Uh-huh.

8 ANSWER: We -- we went through it on
9 the -- on the whiteboard. I think Peter even made an
10 SDL diagram on the solution.

11 QUESTION: How?

12 ANSWER: An SDL. That's kind of a shot
13 where you go through it in details, the step next to the
14 actual code. Sometimes you even can compile an SDL
15 diagram to code. So you actually -- you build it.

16 QUESTION: And was there anything unique
17 about the way that you used ARQ discard as opposed to
18 what had been done before?

19 ANSWER: Yes. Actually -- actually, the
20 extra thing is that they can force the receiver to move
21 on and change the window -- reception window and don't
22 expect (sic) packets that have been discarded. That's
23 what's new.

24 QUESTION: And you talked about reception
25 windows and packets. And I was wondering if you could

1 give me an example for a user -- just an average user of
2 a wireless device, how does your invention, if at all,
3 improve their experience?

4 ANSWER: For the end user, it will have a
5 realtime application, that is, voice or
6 teleconferencing, Skype, for instance, or a gaming
7 application, where you actually have a bigger need for
8 fresh data than to get all data. Then you don't have to
9 wait for discarded packets to be retransmitted if
10 they're updated.

11 So if you don't have this mechanism, then
12 you get -- can get stalled, and you have to wait for
13 retransmission, which are unnecessary.

14 QUESTION: So if you were on a video
15 call, what would that look like?

16 ANSWER: Then it would be that you get an
17 interrupt in that communication.

18 QUESTION: And your invention solves
19 this?

20 ANSWER: Our invention makes it possible
21 for the application to move on, even though it hasn't
22 got all the packets, which prevents it to get stalled.

23 QUESTION: And are you proud of your
24 invention?

25 ANSWER: Yes.

1 (End of video clip for Plaintiff.)

2 (Video clip playing.)

3 QUESTION: And you don't claim to have
4 invented ARQ?

5 ANSWER: No.

6 QUESTION: Selective reject?

7 ANSWER: No.

8 QUESTION: Those pre-existed your alleged
9 invention by many years?

10 ANSWER: Yes.

11 QUESTION: Discard. The concept of
12 discarding packets is one that is much older than your
13 patent, correct?

14 ANSWER: Yes.

15 QUESTION: It's been around for quite a
16 while?

17 ANSWER: Yes.

18 QUESTION: Did the wireless ATM prototype
19 that you prepared use the solution that you believe you
20 and Peter came up with to this problem?

21 ANSWER: No.

22 QUESTION: What part of the solution did
23 it not use?

24 ANSWER: It didn't use the solution at
25 all.

1 QUESTION: Why didn't it use the
2 solution?

3 ANSWER: They considered it a bit too
4 complicated to implement. That's quite common when
5 you're -- firstly, you make a prototype. And then the
6 prototype has an aiming for certain purpose.

7 And also when you're starting up
8 something, you are trying to build a base of the product
9 or the prototype. There you're not really open to add
10 on complexity stuff.

11 QUESTION: Are you aware of any Ericsson
12 product that ultimately did incorporate the solution
13 that you and Peter believe you came up with?

14 ANSWER: I'm not sure about that.

15 QUESTION: Sitting here today, you can't
16 name a product that incorporated it?

17 ANSWER: No.

18 QUESTION: Is it fair to say then, using
19 the words of the patent, that it commands the receiver
20 to receive this packet, which -- in the example we're
21 talking about of 7 and also to release expectations of
22 packets before 7?

23 ANSWER: Yes. At least it informs him
24 that you can't expect anymore, and what you can expect
25 is higher than this.

1 QUESTION: And also it commands the
2 receiver to receive 7. It has both of those functions.

3 ANSWER: Yeah, you can say that, or at
4 least that you can't get anything less. If it
5 doesn't -- if it doesn't -- doesn't accept, I mean,
6 there's no one that can do something much about it. So
7 I'm not sure if it command is the right word.

8 QUESTION: Okay. Well, let's take a
9 look, just so we're on the same page, at Column 10 of
10 the patent. And if we start at Line 12 in Column 10.

11 You believe that the solution that you
12 testified earlier is covered or embodied in Claim 1 of
13 this patent, correct?

14 ANSWER: Yes.

15 QUESTION: And if you look at Line 16, it
16 says: A transmitter in the data network commanding a
17 receiver in the data network to (a) receive at least one
18 packet having a sequence number that is not consecutive
19 with a sequence number of a previously received packet;
20 and (b) release any expectation of receiving outstanding
21 packets having sequence numbers prior to the -- at least
22 one packet.

23 Do you see that?

24 ANSWER: Yeah.

25 QUESTION: Okay.

1 ANSWER: I see it.

2 QUESTION: And so you would agree that
3 what's being talked about here is a command to receive a
4 packet and a command to release expectations of
5 receiving prior packets?

6 ANSWER: Yeah. For me, command is that
7 their transmitter tells the other side that they can't
8 accept anything else than the number that is in the
9 packet.

10 QUESTION: You would agree that the
11 command here is stated in two separate parts, right, the
12 (a) and the (b) that we just read?

13 ANSWER: Yes.

14 QUESTION: So there's a command to
15 receive one packet, and then there's a command to
16 release expectation of receiving, prior to that one
17 packet?

18 ANSWER: Yes.

19 QUESTION: Okay. And you -- you believe
20 that that -- in addition to discarding packets of which
21 acknowledgment has not been received and which have
22 sequence numbers prior to at least one packet, that that
23 constitutes the solution that you were talking about
24 earlier?

25 ANSWER: Claim 1 is according to the

1 solution that we talked about.

2 QUESTION: And so is the command to
3 receive and release expectations a solution to that
4 situation where the window is stuck because there's a
5 packet that keeps needing to get retransmitted?

6 ANSWER: Yes.

7 QUESTION: So looking at Figure 2 again,
8 if you had a system that was designed where you could
9 receive a packet, let's say Sequence No. 7, beyond TSN
10 Max and shift the window automatically with just a
11 regular packet, you wouldn't need the command that
12 you're talking about in Claim 1, correct?

13 ANSWER: Yes. If you had that, then you
14 wouldn't need it.

15 QUESTION: Are you aware of any products
16 that Ericsson sells today that embody or practice the
17 '625 patent.

18 ANSWER: No.

19 QUESTION: Are you aware of any products
20 sold in the past that embody or practice the '625
21 patent?

22 ANSWER: No.

23 QUESTION: You don't believe you invented
24 BlockAck?

25 ANSWER: No.

111

1 QUESTION: Do you know what BlockAck is?

2 ANSWER: Not really. But I know that I
3 didn't patent it.

4 QUESTION: Do you have an understanding
5 of what segmentation is?

6 ANSWER: Yes.

7 QUESTION: What is it?

8 ANSWER: You get longer masses and break
9 it into smaller masses. Or smaller packets. That's the
10 correct term.

11 QUESTION: Have you ever received any
12 other kind of honor or recognition for your work as an
13 inventor at Ericsson?

14 ANSWER: No.

15 QUESTION: Are you aware of any standards
16 that embody or practice the '625 patent?

17 ANSWER: I don't know.

18 QUESTION: You're not aware of any?

19 ANSWER: I'm not aware. I haven't read
20 it.

21 QUESTION: Have you heard of any praise
22 for the '625 patent or the invention of the '625 patent
23 outside of Ericsson?

24 ANSWER: I haven't heard any.

25 QUESTION: Okay. That's -- that's not my

1 question. My question is, sitting here today, can you
2 identify an Ericsson product that uses what you believe
3 is the '625 invention?

4 ANSWER: No. I don't know any product
5 that implemented that.

6 QUESTION: You testified that you can't
7 point to a single product that you have ever used that
8 embodies your invention, correct?

9 ANSWER: Yes. I don't know of any
10 product using the patent.

11 QUESTION: And you've never read all of
12 802.11?

13 ANSWER: No.

14 QUESTION: So sitting here today, you are
15 not qualified to provide any kind of testimony on what
16 it discloses and how it relates to your patent, correct?

17 ANSWER: Correct.

18 (End of video clip for Defendants.)

19 THE COURT: All right.

20 MR. CAWLEY: Ladies and Gentleman, next
21 you will see the video deposition of Alex Krister Raith.
22 Mr. Raith is an engineer at Ericsson and a named
23 inventor on the '568 patent.

24 Ericsson's designated 7 minutes and
25 29 seconds of testimony. Defendants have designated

1 5 minutes and 4 seconds. So that's about a -- just a
2 little over 10 minutes.

3 THE COURT: All right. You may proceed.
4 (Video playing.)

5 QUESTION: Hi, Mr. Raith.

6 ANSWER: Hi.

7 QUESTION: Can you please introduce
8 yourself to the jury?

9 ANSWER: My name is Krister Raith. I
10 started to work after I got my Master of Electrical
11 Engineering degree in Sweden. I started work for
12 Ericsson in Sweden in 1993.

13 I worked with the 1G and 2G systems, for
14 example, development of what was to be known as GSM; and
15 during the '80s and later on in the end of '80s, I
16 worked with corresponding technology directed for United
17 States Digital Cellular Systems at --

18 QUESTION: Go ahead. I'm sorry.

19 ANSWER: -- that was subsequently
20 deployed by Bell South, Southwestern Bell, and AT&T.

21 All of them may have changed name over
22 the years here.

23 In '90, I decided to move to North
24 Carolina where Ericsson had developed -- initiated
25 research development in North Carolina since I was

1 traveling so much, to participate in the standards
2 organizations devoted for U.S. Digital Cellular.

3 So from 1990 to '99, I worked in
4 developing standards and technology directed for the --
5 what was known to be the TDMA technology.

6 In 1999, I decided to move to another
7 business unit in -- within Ericsson located in San Diego
8 where we developed products for the CDMA2000, which is
9 technology currently used by Verizon and Sprint, for
10 example. And I participated -- I continued to
11 participate in the standards development but now, in
12 this case, directed to CDMA2000.

13 And in CDMA -- in 2005, about that time,
14 Ericsson closed that business unit in San Diego. I was
15 offered to continue my employment, for example, in
16 Dallas, but I decided to stay in San Diego, so I left
17 Ericsson.

18 I became semi-retired or -- and started
19 consulting, and I've been consulting in the area of
20 patents, essentially since 2006 or 2007 until current
21 time.

22 QUESTION: How long did you work for
23 Ericsson?

24 ANSWER: From early '93 to -- given some
25 evidence that was presented in this discussion, I may

1 have ended my employment with Ericsson early 2006 and
2 not 2005.

3 QUESTION: Were you doing research that
4 entire time?

5 ANSWER: From a broad perspective, yes.
6 It would be fit into a research and development
7 organization, yes.

8 QUESTION: Okay. Are you the named
9 inventor on any patents?

10 ANSWER: Yes. I have 101 issued U.S.
11 patents.

12 QUESTION: Okay. And are you the named
13 inventor on the '019 and '568 patents at issue here?

14 ANSWER: Yes, I am.

15 QUESTION: Okay. Are you the only
16 inventor?

17 ANSWER: No, I'm not.

18 QUESTION: Who are your co-inventors?

19 ANSWER: John Diachina and Jim Ragsdale.

20 QUESTION: How did you come to know
21 Mr. Diachina and Mr. Ragsdale?

22 ANSWER: John Diachina was employed right
23 after -- right -- right about when I came to North
24 Carolina, very similar timeframe. Jim Ragsdale was
25 employed about two, three years later.

1 QUESTION: So were all three of you at
2 Ericsson when you came up with the idea for the '019 and
3 568 patents?

4 ANSWER: That's correct.

5 QUESTION: Okay. With regard to the '019
6 and '568 patents, what work were you doing generally at
7 Ericsson that led to the ideas in those patents?

8 ANSWER: In general, we were fostering --
9 there was competition among the various kind of
10 technologies existing on the marketplace. And, of
11 course, our objective was to try to improve on the
12 technology, to improve it such that it provided more
13 features and functionality to the end users in an
14 efficient way.

15 QUESTION: Okay. So what's the specific
16 problem that you were trying to address with the '019
17 patent?

18 ANSWER: That was to provide a multimedia
19 solution where you could provide voice and video or
20 voice and whiteboard applications -- a concurrent voice
21 and video, for example, or concurrent voice and
22 whiteboard -- or basically graph to the seller
23 telephone.

24 QUESTION: And what was the solution that
25 you came up with?

1 ANSWER: Well, in order to be efficient,
2 we needed to provide mechanisms such that one uses the
3 existing bandwidth or existing radio channels in the
4 most efficient way. And one way to accomplish that is
5 to prioritize among the different data and not -- not
6 waste resources. So we did it in the most efficient
7 way.

8 QUESTION: So can you explain how your
9 invention would affect, you know, the everyday users of
10 a cell phone, for example?

11 ANSWER: With the invention a user at
12 that time -- or, you know, given it would take some
13 years to develop product, would be able to, for example,
14 have a speech connection and perhaps a whiteboard
15 application or a map or a graph on the display so you
16 can give direction and speak about the direction and
17 then maybe have a little map in front of you.

18 QUESTION: All right. So in 2005 or
19 2006, you opened your own consulting business?

20 ANSWER: Yeah. Yes.

21 QUESTION: Okay. And what type of
22 consulting do you do?

23 ANSWER: I consult regarding IPRs.

24 QUESTION: Okay. And what does that
25 mean? What's an IPR?

1 ANSWER: Basically, I consult regarding
2 patents.

3 QUESTION: Okay. And is Ericsson one of
4 your clients?

5 ANSWER: That's correct.

6 QUESTION: And what's your rate now?

7 ANSWER: 220.

8 QUESTION: Does your rate -- is that --
9 is your rate the same for all work that you do?

10 ANSWER: No, it's not.

11 QUESTION: Okay. So for different types
12 of work, it's -- could be more expensive or less
13 expensive?

14 ANSWER: That's correct.

15 QUESTION: So I'll rephrase it.

16 When -- for depositions, when you have to
17 work on depositions, you -- your rate is double?

18 ANSWER: Yes.

19 QUESTION: When did the issue of charging
20 more for a deposition, when did that first come up?

21 ANSWER: It came up related to this case.

22 QUESTION: So in this case -- explain to
23 me, how did it come up?

24 ANSWER: I stated my rate.

25 QUESTION: Since you graduated from the

1 university, your work has exclusively focused on
2 research in the -- in cellular technologies; is that
3 correct?

4 ANSWER: That's correct.

5 QUESTION: Okay. While you were at
6 Ericsson, did you ever do research on wireless local
7 area network technologies?

8 ANSWER: No, I did not.

9 QUESTION: Would you consider yourself an
10 expert in 802.11?

11 ANSWER: No.

12 QUESTION: Okay. Have you -- have you
13 ever attended any 802.11 meetings?

14 ANSWER: No, I have not.

15 QUESTION: Did you ever make any
16 contributions to 802.11?

17 ANSWER: No, I haven't -- I have not.

18 QUESTION: Did you ever comment on -- on
19 any contributions to 802.11?

20 ANSWER: No, I have not.

21 QUESTION: Did you -- have you ever had
22 any involvement in the 802.11 standard-setting process?

23 ANSWER: No, I have not.

24 QUESTION: Okay. You've never voted on
25 an 802.11 issue or contribution?

1 ANSWER: That's correct.

2 QUESTION: Okay. Have you ever held a
3 position at the IEEE?

4 ANSWER: No, I have not.

5 QUESTION: So you've never been an
6 officer, for instance, in any 802.11 working group or
7 task group?

8 ANSWER: That's correct.

9 QUESTION: And none of your work at
10 Ericsson related to 802.11?

11 ANSWER: That's correct.

12 QUESTION: Did you ever create a
13 prototype that incorporated the idea for the '019 patent
14 and '568 patents?

15 ANSWER: No, we did not.

16 QUESTION: Okay. So you never created a
17 physical product that incorporated the idea of the '019
18 patent and '568 patents?

19 ANSWER: That's correct.

20 QUESTION: And so what you came up with
21 in the '019 patent and '568 patents is the idea of using
22 something called a service type identifier to inform a
23 receiver about the type of information that's being
24 transmitted at a given point in time on a traffic
25 channel. Is that right?

1 yes.

2 QUESTION: Right. It is traditional
3 practices at Ericsson for Ericsson to reward inventors
4 with some financial compensation for a patent?

5 ANSWER: That's correct.

6 QUESTION: Did you receive any honors,
7 awards, or other recognition for the ideas of the '019
8 and '568 patents?

9 ANSWER: For these patents specifically?

10 QUESTION: Yes.

11 ANSWER: No.

12 QUESTION: Okay. And are you aware of
13 any honors or awards or recognition being bestowed upon
14 the '019 and '568 patents?

15 ANSWER: No. Not specifically with those
16 patents, no.

17 QUESTION: Ericsson never bestowed any
18 sort of honor, awards, or recognition upon the '019 or
19 '568 patents?

20 ANSWER: Not specifically for these two
21 patents, yes.

22 QUESTION: Okay. You're familiar with
23 the concept of quality of services or QoS, right?

24 ANSWER: To some extent, yes.

25 QUESTION: Did you invent the concept of

1 quality of service or QoS?

2 ANSWER: Probably not.

3 QUESTION: Okay. The idea or concept of
4 quality of service came before the '019 and '568
5 patents?

6 ANSWER: I think that's fair to say.

7 QUESTION: The idea or concept of
8 prioritization, that was around before your '019 and
9 '568 patents, right?

10 ANSWER: Yeah, I think so.

11 QUESTION: Did you invent 802.11?

12 ANSWER: No, I did not invent 802.11.

13 QUESTION: Did you invent 802.11n?

14 ANSWER: No, I did not.

15 (End of video clip.)

16 THE COURT: All right. Anything further?

17 MR. CAWLEY: Not from the video
18 depositions, Your Honor.

19 THE COURT: All right. Who will your
20 next witness be?

21 MR. CAWLEY: Your Honor, we call to the
22 stand Christina Petersson.

23 THE COURT: All right. Ms. Petersson.

24 Is she outside the courtroom?

25 MR. CAWLEY: Out in the hall, Your Honor.

1 THE COURT: All right. Could someone go
2 get her, please?

3 (Pause in proceedings.)

4 THE COURT: You can just come forward
5 here, Ms. Petersson. Welcome back to the courtroom.

6 THE WITNESS: Thank you.

7 THE COURT: All right. You may proceed,
8 Mr. Cawley.

9 MR. CAWLEY: Thank you, Your Honor.

10 CHRISTINA PETERSSON, PLAINTIFFS' WITNESS,

11 PREVIOUSLY SWORN

12 DIRECT EXAMINATION

13 BY MR. CAWLEY:

14 Q. Would you tell us your name, please?

15 A. Yes. My name is Christina Petersson.

16 Q. Why are you here, Ms. Petersson?

17 A. I am here to testify on behalf of my employer,
18 Ericsson.

19 Q. Where do you live?

20 A. I live in a suburb outside of Stockholm in
21 Sweden.

22 Q. Did you grow up in Sweden?

23 A. Yes, I did, in a small city about 200
24 kilometers outside of Stockholm.

25 Q. I see.

1 Is English your native language?

2 A. No, it is not. It's Swedish.

3 Q. I guess you grew up speaking Swedish.

4 A. Yes.

5 Q. Where did you learn to speak English?

6 A. I learned English in school, just as any
7 children in Sweden, since it's a small country.

8 Q. Okay. And do you speak English frequently in
9 connection with your job at Ericsson?

10 A. Yes, I do. As a matter of fact, English is
11 the corporate language of Ericsson.

12 Q. Okay. Now, is this your first time to come to
13 Texas, Ms. Petersson?

14 A. It's not. Our headquarters here in the U.S.
15 is in Plano in Dallas, so I visit frequently Plano.

16 Q. Okay. How about Tyler?

17 A. I've never been to Tyler before in my life,
18 no.

19 Q. Okay. Well, welcome to Tyler.

20 Tell us a little bit about yourself before we
21 learn more about your job at Ericsson.

22 A. My job at Ericsson, I'm a lawyer, a business
23 lawyer. I have a small group of lawyers in my team who
24 report to me, and we provide legal services to the
25 group, the IPR group, who are doing the license

1 agreements. So we're basically drafting license
2 agreements.

3 Q. Okay. Tell -- tell us about your family back
4 in Sweden.

5 A. I have a husband, and I have a six-year-old
6 son who is about to start to school this autumn.

7 Q. Okay. Where did you go to school,
8 Ms. Petersson?

9 A. I went to school, obviously, in the small city
10 where I grew up, and I went to the university in
11 Uppsala, a city outside of Stockholm.

12 Q. Okay. And what degree did you get at the
13 university?

14 A. I got a law degree at that university.

15 Q. How long have you worked for Ericsson?

16 A. I have worked for Ericsson since January of
17 1998.

18 Q. Now, you already told us that you're a lawyer
19 working within Ericsson?

20 A. Yes.

21 Q. Do you have -- do you have a law degree from a
22 Swedish university?

23 A. Yes, I do.

24 Q. Are you a trial lawyer, a lawyer like the ones
25 here who go into court and try cases?

1 A. No, not at all. As a matter of fact, the only
2 time I've been in a courtroom was during my law school.

3 Q. Okay.

4 A. So, no.

5 Q. Okay. So you haven't been in a courtroom
6 since law school --

7 A. No.

8 Q. -- until today -- or yesterday, I guess?

9 A. Yes.

10 Q. Okay. Now, what is it that you do a little
11 more specifically for Ericsson?

12 A. I participate with legal support, drafting the
13 different license agreements that we have. We do also
14 do trademarks and copyrights. So we have IPR legal
15 support --

16 Q. Okay.

17 A. -- to Ericsson.

18 Q. And IPR is a word -- or some letters that we
19 heard yesterday, and tell us again what that stands for.

20 A. That stands for trademarks, brands, copyright,
21 and patents.

22 Q. Okay. IPR means intellectual property rights?

23 A. Yes.

24 Q. Now, are you a person -- in addition to
25 writing the written license agreements, do you negotiate

1 patent license agreements for Ericsson?

2 A. Yes, I do. I don't participate, just to be
3 honest, in the entire face of the negotiations. They
4 usually start out by technical discussions where --
5 since I don't have a technical background, I don't
6 participate. Then they move over to the business phase
7 where I sometimes participate, sometimes not. And I do
8 participate in -- in the actual conclusion of the -- the
9 agreement.

10 Q. Okay. You sort of told us a little bit about
11 the process there, but since -- since most of us don't
12 have much reason to ever get involved in the licensing
13 of a patent, let me -- let me ask you about it a little
14 more specifically.

15 If a company wants to make a product, let's
16 say, that practices a standard that uses an Ericsson
17 patent, how does Ericsson go about negotiating a license
18 for a fair rate?

19 A. Like I said, we would start out by the
20 technical discussions. We, of course, look at the
21 standard. We look at our portfolio. We look at the
22 portfolio of other parties. We come up with a rate. We
23 go out and we discuss that rate with potential
24 licensees -- that would be the potential companies who
25 are using our technology. And by doing so, we learn a

1 lot of information from these licensees. And that's
2 kind of a sanity check that the rate we're discussing
3 is -- is appropriate.

4 Q. Okay. So let me -- let me make sure that I
5 kind of understand the process.

6 First of all, how do you even get in contact
7 with another company who might need to take a license to
8 Ericsson's patents?

9 A. We send them a letter, usually, pointing out
10 that we have patented ideas in the area where they are
11 conducting business. That's the way it starts. And
12 then we would have meetings to follow up.

13 Q. Okay. And what -- what kind -- what are those
14 meetings typically like at the beginning?

15 A. At the beginning, most of the times they start
16 out by technical discussions where our technical people
17 explain our patented ideas to the user. And usually the
18 user explains his product. This can be a tough fight in
19 between the two. When we have concluded that there is a
20 use in the product, we discuss the potential royalty --
21 the potential payment or compensation to Ericsson that
22 would be paid.

23 Q. Where do these meetings usually take place?

24 MR. DAUCHOT: Excuse me, Your Honor.

25 Objection on 402 grounds and hearsay, as well. May we

1 approach for side-bar?

2 THE COURT: All right.

3 (Bench conference.)

4 MR. DAUCHOT: Your Honor, on behalf of
5 the Defendants, these discussions with other parties in
6 the context of these negotiations is hearsay. These are
7 out-of-court statements offered for the truth of the
8 matter asserted, and so it's classic hearsay to which I
9 don't see an exception. That's Point No. 1.

10 Point No. 2, for 402 grounds on I don't
11 see what those discussions -- they are any relevance to
12 what's going on in this case along the lines of what I
13 discussed this morning with Your Honor, relative to HP
14 in particular.

15 And No. 3, we are getting into 403, which
16 is clearly unfair prejudice. Given Your Honor's rulings
17 on Daubert or in limine -- I'm sorry, under Rule 408 --
18 I mean, this is unfairly prejudicial for those reasons.

19 MR. CAWLEY: Well, Your Honor, first of
20 all, it's not hearsay. It's not being offered for the
21 truth of what's asserted. It's being offered to the
22 jury about what a licensing discussion is like. We
23 haven't tied it to any particular Defendant or any
24 party. She's just giving a general discussion of how
25 licensing works.

1 THE COURT: Okay. Keep it general --
2 general discussion.

3 (End of bench conference.)

4 Q. (By Mr. Cawley) Ms. Petersson, you were
5 explaining to us how the licensing process typically
6 works, and I think you just told us that typically it
7 starts with technical meetings between Ericsson and the
8 company that you're talking to?

9 A. Yes.

10 Q. Where do meetings like that typically take
11 place?

12 A. Usually they take place at the office -- head
13 office of the potential user. So it's us having to
14 travel to their offices usually. It sometimes happens
15 that they come to Stockholm, as well.

16 Q. Okay. And so do you -- do those kind of
17 meetings take place all over the world?

18 A. They do, yes.

19 Q. And I think you told us that once there --
20 there have been some meetings on the technical terms,
21 then there may be some additional meetings on the
22 business terms?

23 A. Yes, that would -- after the conclusion that
24 the user is actually using -- using our patented idea,
25 it moves on into the -- what we call the business

1 discussions where the potential compensation that is
2 supposed to be paid to Ericsson are discussed.

3 Q. Okay. And then there -- there finally, I
4 guess, would be maybe meetings or at least an exchange
5 of -- of written documents?

6 A. Yes, there would be.

7 Q. Okay.

8 A. Not always, but most of the times, yes.

9 Q. And -- and those written documents are usually
10 referred to as a license agreement?

11 A. Yes. The license agreement is always
12 concluded in writing.

13 Q. Now, how long -- you've told us about quite a
14 few discussions that might take place, quite a few
15 meetings that might take place to negotiate a license
16 agreement.

17 How long does that usually take?

18 A. It might go very quickly. Sometimes it can
19 take years.

20 Q. Years?

21 A. I would say approximately around a year is
22 the -- the -- perhaps the average.

23 Q. Okay. How many license -- excuse me, patent
24 license agreements does Ericsson have?

25 A. We have today around 100 license agreements.

1 Q. 100 license agreements. Covering how many
2 Ericsson patents?

3 A. Some of the agreements cover our entire patent
4 portfolio, the entire 33,000 patents that we own. Some
5 of them just cover a specific number that is listed in
6 the agreement. Some of them cover what we call a
7 portfolio of patents which would be a subset of our --
8 of our entire portfolio --

9 Q. Okay.

10 A. -- in -- in relation to specific technology.

11 Q. Good. You know, Mr. Brismark used that word
12 yesterday, and I meant to ask him about it and forgot,
13 so I want to ask you. What does a portfolio mean when
14 you're talking about it in terms of patents?

15 A. We mean a portfolio -- more or less like
16 saying it's more than one patent. If -- if you have --
17 see, because all our patents in 2G, you can say that's
18 our 2G portfolio of patents.

19 Q. Okay. So sometimes you use it to refer to a
20 smaller set of Ericsson's patents that relate to a
21 particular thing?

22 A. Yes, that's correct.

23 Q. For example, in this case we're talking about
24 Ericsson -- at least some of the patents in Ericsson's
25 Wi-Fi portfolio?

1 A. Yes, correct.

2 Q. But -- but sometimes do you also talk just
3 about Ericsson's patent portfolio which means all their
4 patents?

5 A. Yes.

6 Q. Okay. And let me ask you about this. You --
7 you've described for us a process that you have
8 participated in that sometimes results in the entry into
9 a license agreement for the use of Ericsson's patents.
10 Does it sometimes happen in your experience
11 that a company may insist that even though they
12 acknowledge that they need to license Ericsson's
13 patents, nevertheless insist on being sued by Ericsson
14 first?

15 A. Yes, that happens.

16 Q. Why would that happen?

17 A. Sometimes the -- to start with, the company
18 that we are having discussions with would be the company
19 who are making the -- what we call ready-to-use
20 products. That is products that the consumer can
21 actually use.

22 Sometimes when they buy components from a
23 component manufacturer, that component manufacturer
24 might have in its sales agreement stated that if you are
25 infringing upon a third-party patent --

1 MR. DAUCHOT: Your Honor, objection.

2 May we approach?

3 THE COURT: Yes, you may.

4 MR. DAUCHOT: Thank you.

5 (Bench conference.)

6 MR. DAUCHOT: Your Honor, we have the
7 witness speculating about what some agreements have
8 been. They are not in evidence. Might say, with
9 respect to some hypothetical. It's absolute rank
10 speculation and speculation along the lines that the
11 Plaintiffs think will convince the jury to steer away
12 specifically to -- so to have a jury sitting here and
13 thinking about hypothetical agreements, as she did, "may
14 be" this and then rank speculation, it's -- it's
15 inappropriate here under 402, certainly under 403.

16 And here we go again with her talking
17 about companies making -- she's talking about what kind
18 of users and manufacturers -- what their discussions are
19 with chipset manufacturers.

20 Those are conversations between two
21 people who aren't even in this case. So it's just
22 hearsay on top of hearsay on top of hearsay, according
23 to 402, and it's prejudicial, Your Honor.

24 MR. CAWLEY: It's not hearsay. It's not
25 being offered for the truth of any matter asserted.

1 It's not speculation. She's testifying that she has
2 seen this exact situation in licensing discussions.

3 THE COURT: Isn't that exactly what we
4 have in this situation?

5 MR. DAUCHOT: Here's the other -- maybe
6 yes, maybe no. All of this stuff has been kept under
7 Rule 408. And it's also willfulness, since this has
8 just turned -- all of this stuff is bifurcated, Your
9 Honor, at the Plaintiffs' request.

10 THE COURT: Objection's overruled, but
11 move on.

12 MR. CAWLEY: Can she finish her answer?
13 She's still --

14 THE COURT: Yes.

15 (Bench conference concluded.)

16 Q. (By Mr. Cawley) Ms. Petersson, you remember
17 what you were -- you were saying in your answer?

18 A. I think so, yes.

19 Q. Would you go ahead and complete your answer?

20 A. Yes. In the sales agreement between the
21 component manufacturer and its customer, there could be
22 a clause, a writing saying that the component
23 manufacturer will be responsible for making payments or
24 paying the potential royalty payment that its customer
25 has to make in case of a patent infringement.

1 Q. Okay. And that's the circumstances that might
2 lead to a company saying, sorry, we may need a license,
3 but you have to sue us first?

4 A. Yes, it might be. Because the clause might
5 say that I will only pay this amount provided that a
6 court has established the rate that you are supposed to
7 pay.

8 Q. Okay. Thank you, ma'am.

9 Let's move on now and talk specifically about
10 Ericsson's licenses for its Wi-Fi patent.

11 Have -- have some companies licensed
12 Ericsson's Wi-Fi patents?

13 A. Yes, they have.

14 Q. When did Ericsson first start discussing with
15 other companies licensing its patents to Wi-Fi?

16 A. In the time frame of 2003 and 2004.

17 Q. Okay.

18 MR. CAWLEY: Your Honor, at this time
19 we're going to inquire into some confidential financial
20 information, and we would request that the Court seal
21 the courtroom.

22 THE COURT: All right. Let me explain to
23 the jury and to the audience what Mr. Cawley is about to
24 go into is confidential information that the parties on
25 either side in a case can designate certain information

1 as confidential, attorneys' eyes only, which means that
2 only the attorneys in the case can see it.

3 And then that's covered by what we call a
4 protective order which means that those attorneys cannot
5 disclose this information to anyone else.

6 So Mr. Cawley has indicated that he's
7 about to go into some material that has been so
8 designated by one party or another in this case and,
9 therefore, at this time, unless you are an attorney of
10 record in this case and subject to the protective order
11 in this case, you will need to leave the courtroom.

12 How long do you anticipate this testimony
13 will take?

14 MR. CAWLEY: 15 to 20 minutes.

15 THE COURT: All right. We'll probably go
16 and -- if you want to go on and go to lunch, we'll plan
17 to recess for lunch probably immediately after that. So
18 you can just take an early lunch break if you'd like to.
19 But if you're not an attorney covered by the protective
20 order, then you are excluded from the courtroom at this
21 time.

22 (Pause while courtroom cleared.)

23 MR. JONES: Your Honor, the experts
24 signed a protective order so they can stay, too.

25 THE COURT: Is there any objection to

1 experts staying that have signed on under the protective
2 order from any party?

3 MR. CAWLEY: No objection from the
4 Plaintiff, Your Honor.

5 THE COURT: All right. Experts who
6 have -- know that they have signed the protective order
7 may stay, as well.

8 (Courtroom sealed.)

9 (This portion of the proceedings is
10 SEALED and filed under separate cover.)

11 (Courtroom unsealed.)

12 THE COURT: Let me ask you, how much
13 longer you probably have with this witness?

14 MR. CAWLEY: Oh, I think that I have
15 another 10 minutes.

16 THE COURT: Okay. I think we'll go ahead
17 and break for lunch at this time, Ladies and Gentleman.

18 We'll be in recess until 10 minutes until
19 1:00.

20 Please remember my instructions, and we
21 will see you back here in about 30 minutes. Be in
22 recess.

23 COURT SECURITY OFFICER: All rise.

24 (Jury out.)

25 (Lunch recess.)

1 CERTIFICATION

2

3 I HEREBY CERTIFY that the foregoing is a
4 true and correct transcript from the stenographic notes
5 of the proceedings in the above-entitled matter to the
6 best of our abilities.

7

8

9 /s/ Shea Sloan
SHEA SLOAN, CSR
10 Official Court Reporter
State of Texas No.: 3081
11 Expiration Date: 12/31/14

12

13

/s/ Judith Werlinger
14 JUDITH WERLINGER, CSR
Deputy Official Court Reporter
15 State of Texas No.: 731
Expiration Date 12/31/14

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